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OCTOBER TERM, 1957

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MILLS MILL, DRAPER CORPORATION AND THE POWELL KNITTING COMPANY, INDIVIDUALLY AND ON BEHALF OF ALL OF THE TAXPAYERS IN UNA WATER DISTRICT WHO MAY CARE TO COME IN, CONTRIBUTE TO THE COSTS HEREOF AND PARTICIPATE IN THIS ACTION, APPELLANTS,

versus

ERNEST E. HAWKINS, B. R. WEST AND J. T. NORTON, INDIVIDUALLY AND CONSTITUTING THE UNA WATER DISTRICT COMMISSION, APPELLEES.

ON APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellants appeal from the Judgment of the Supreme Court of South Carolina entered on June 19, 1957, which, by a divided Court, affirmed the results of an Order of the Court of Common Pleas for Spartanburg County, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial Federal question is presented.

OPINIONS BELOW

The majority and minority opinions of the Supreme Court of South Carolina are reported in Westbrook's Advance Sheets, dated June 22, 1957. They are not yet reported in the S. C. and S. E. 2d Reports. Copies of the majority and minority opinions are attached hereto as Ap-

pendix A. The Order of the Court of Common Pleas of Spartanburg County is not reported. It is attached hereto as Appendix B.

JURISDICTION

This suit was brought to have declared unconstitutional that Act of the General Assembly of South Carolina purportedly creating Una Water District (Act No. 582 of the Acts of the General Assembly of the State of South Carolina, 1955, 49 Statutes at Large of South Carolina, page 1400 *et seq.*) and to enjoin the appointed Commissioners thereof from issuing any general obligation bonds. The majority and minority opinions of the Supreme Court of South Carolina were filed on June 19, 1957. Appellants' Petition for Rehearing was denied by Order entered August 6, 1957, with two members of the Court dissenting. Notice of Appeal was filed with the Clerk of the Supreme Court of South Carolina on October 18, 1957.

The jurisdiction of the Supreme Court to review the opinions of the Supreme Court of South Carolina is conferred by Section 1257 (2) of Title 28, United States Code. The following decisions sustain the jurisdiction of the Supreme Court to review the Judgment of the Supreme Court of South Carolina: *Demorest v. City Bank Farmers Trust Company,* 321 U. S. 36, 88 L. Ed. 526; *Nashville, C. & St. L. R. Co. v. Walters,* 294 U. S. 405, 79 L. Ed. 329; *Dahnke-Walker Milling Co. v. Bondurant,* 257 U. S. 282, 66 L. Ed. 239; *Myles Salt Co. v. Board of Commissioners,* 239 U. S. 478, 60 L. Ed. 329.

STATUTES INVOLVED

49 Statutes at Large (of South Carolina), page 1400 *et seq.* is set forth in Appendix C hereto. 38 Statutes at Large (of South Carolina), pages 1292 *et seq.*, now Sections 59-601 through 59-625, Code of Laws of South Carolina, 1952. This Act is set forth in Appendix D hereto.

QUESTION PRESENTED

Does not Act No. 582 of the Acts of the General Assembly of the State of South Carolina, 1955, 49 Statutes at Large, Page 1400 *et seq.*, and its application deprive these Appellants and all others similarly situated of property without due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States and deny to them the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States?

STATEMENT OF THE CASE

In 1934 the General Assembly of South Carolina passed and the Governor approved an Act providing the means for creating any area which does not include any incorporated city or town or part thereof into an electric light, water, fire protection and/or sewerage district. The Act further provided for the government of any such district so created, its financing, etc. This Act is officially published in 38 Statutes at Large at page 1292, *et seq.* It is now codified as Sections 59-601 through 59-625 in the 1952 Code of Laws of South Carolina. This Act will hereinafter be referred to as the General Law.

In 1955 the General Assembly of South Carolina passed and the Governor approved an Act purportedly creating by legislative fiat an area (in Spartanburg County) which does not include any incorporated city or town or part thereof into the Una Water District. This Act is officially published in 49 Statutes at Large at page 1400 *et seq.* Hereinafter it will be referred to as the Special Act.

The two Acts are very similar in many respects. The General Law provides that any district created shall be governed by three commissioners. The Special Act provides that the Una Water District shall be governed by three commissioners. The General law grants to the commis-

sioners of any district created thereunder the power of condemnation, the power to establish rates, the power to issue general obligation bonds upon approval of the electorate and the power to issue revenue bonds. The Special Act gives the same powers to the Commissioners of the Una Water District. Both the General Law and the Special Act provide for the levying of taxes to retire general obligation bonds.

But there are material and vital differences between the two Acts. The General Law provides that before any district is formed there shall be filed with the Clerk of the Court of the County in which such district is proposed to be located a written petition signed by a majority of the resident land owners in the proposed district or by the owners of more than half the land in acreage which will be affected by or assessed for the expense of the proposed improvements. It further provides that when any such petition is approved by the Clerk of Court the Clerk shall call an election of the qualified voters of the district to vote upon the establishment of the district. It further provides that the commissioners who are to govern such district shall be elected by the qualified electors of the district. It further provides that no rates shall be established until after a public hearing at which all users of the works and the owners of property served or to be served thereby shall have the opportunity to be heard. Such rights granted to the freeholders, qualified electors and residents of all areas of this State outside of incorporated municipalities are denied by the Special Act to the freeholders, qualified electors and residents of the area comprising the Una Water District. The Special Act creates by legislative fiat into the Una Water District an area of approximately three square miles adjacent and adjoining to the City of Spartanburg at its Northwest perimeter. The freeholders thereof are denied the right of petition and the right to determine the boundaries of the District. The qualified electors within

the area of the District are deprived of the right to vote upon the question of establishing the District, including approval or disapproval of the area proposed. The Special Act provides that the Commissioners of the District shall be appointed by the Governor upon the recommendation of a majority of the legislative delegation from Spartanburg County, thereby depriving the qualified electors from electing the governing body. The Special Act provides that the Commissioners of the District may fix the rates to be charged without any public hearing thereon, thereby depriving the freeholders and residents of the area of the right to be heard upon the question of the rates to be charged. The Special Act further provides that the Commissioners by regulation may require any person within the District to use any water system and/or sewer system constructed by the Commissioners.

The Commissioners of the District propose, in the event the Special Act is not held unconstitutional, to issue $500,000.00 of general obligation bonds for the construction of new water and sewer mains.

The main line of the Southern Railway, running East and West, bisects the District into two approximately equal areas. In the Southern one-half are located the textile plants of the Appellants Mills Mill and The Powell Knitting Company, and the textile machinery warehouse plant of the Appellant Draper Corporation. Each of the Appellants at its own expense and cost some time ago installed a water system and a sewer system, which systems are now in operation and which facilities adequately serve the plants of these Appellants and the communities surrounding such plants. The community surrounding the plants of each Appellant is composed primarily of residences, practically all of which residences are owned and occupied by employees of that Appellant. Each of these water and sewer systems is served

by water from the Spartanburg Water Works, the same water works which serves the City of Spartanburg.

In addition to the facilities installed by these Appellants a number of other water and sewer lines have been laid and are in existence and operation in the District, especially in the Southern one-half. (Outside City Location Map, Spartanburg Water Works, Plaintiff's Exhibit 9.) At present the Spartanburg Water Works is now serving in addition to the plants of these Appellants 490 of the 514 other buildings located in the Southern one-half. Only 24 buildings in the Southern one-half, all or practically all of which are small residences, are not being served by the Spartanburg Water Works.

According to the undisputed testimony of the Superintendent of the Spartanburg Water Works there are at present adequate water facilities available to the Southern one-half of the District. No problem of health or sanitation exists in this Southern one-half of the District. In the entire area comprising the District water and sewerage facilities are inadequate in only two small sections thereof, to wit, Una and Johnson City, both small unincorporated communities located in the Northern one-half of the District. The Una community is located in the Southeastern corner of the Northern one-half and the Johnson City community is located in the West central portion of the Northern one-half.

The total assessed valuations for tax purposes of all property within the area comprising the District is approximately $1,150,000.00. Of this amount $267,000.00 is on the properties of Mills Mill, $83,390.00 is on the properties of Draper Corporation, and $80,000.00 is on the properties of The Powell Knitting Company; $430,380.00, 37.4 percent of the total. Of the total assessed valuation approximately $223,390.00, 19.4 percent, is on the lines, poles, tracks and rights of ways of Duke Power Co., Southern Bell Telephone

& Telegraph Company, A & S Railroad, A & CAL Railroad and P & N. Railroad. None of these last named companies has any properties within the District other than said lines, poles, tracks and rights of ways. In the event the proposed bond issue is issued these Appellants will be required to pay 37.4 percent of the tax levied to retire the bonds and these Appellants and the other named companies will be required to pay 56.8 percent of the tax levied to retire such bonds.

The undisputed testimony is that the minimum average annual cost of retiring the proposed bond issue will be from $34,750.00 to $38,000.00 for 20 years, the exact average annual cost depending upon the interest rate at which the bonds sold. (This testimony was given in December, 1955. There can be little doubt that with the material increase in interest rates since that time the cost of retirement would be considerably higher.) Such minimum average annual cost of retiring the proposed bond issue would require a minimum average annual tax levy of from 30 to 34 mills for 20 years. Assuming the lower levy, the total tax assessment on these Appellants will be $258,228.00, 60 percent of the assessed valuations of their properties, and the total tax assessment on the properties of the foregoing named utilities and railroads will be $133,000.00, 60 percent of the assessed valuations of their properties. If the bonds should be a 30-year issue, the cost of retiring and the tax to retire will be greater.

No benefit, direct or indirect, result or can result to the properties of these Appellants from the Special Act and its application. The possible benefits alleged by the Respondents are speculative and conjectural, and even such speculative benefits are so remote and minute as to fade into insignificance when viewed in the light of the confiscatory tax burden which would be placed on these Appellants. Yet these Appellants and the named utilities and railroads

would be required to pay 56.8 percent of the cost of the proposed water and sewer systems; these Appellants would be required to pay 37.4 percent of such cost; and Mills Mill alone would be required to pay 23.2 percent, all for the benefit of the few in the Una and Johnson City communities. (It is not amiss to here state that water mains and sewer mains are now located in or near each of these two small communities and available to their residents. It is to be noted, too, that a substantial number of residents of the Una community have already taken advantage of the 14-inch and 12-inch water mains which run directly through that community and are served by water from the Spartanburg Water Works. The cost of the remaining residents of these two communities making use of such available water and sewer mains would be a fraction of that proposed to be expended.) That benefit to the properties of these Appellants is speculative and remote is tacitly recognized by the majority opinion of the Supreme Court of South Carolina, wherein only two possible benefits are mentioned and in which it is stated that such possible benefits "may" result.

If under the provisions of the Special Act the Commissioners should see fit to acquire the water and sewer systems of the Appellants, the Appellants would themselves pay, in taxes, 37.4 percent of the compensation due them in the transaction. If such systems should not be so acquired, Appellants may effectually be deprived of them and their value without compensation, for Subsection 6 of Section 3 of the Special Act empowers the Commissioners to "prescribe regulations requiring persons who shall be residents of the District to make use of any water or sewer system which the District shall place in operation."

That the Special Act and is application deprive these Appellants of due process of law and deny to them the equal protection of the laws in violation of the Constitu-

tion of the United States was expressly alleged in the Complaint of these Appellants by which this action was commenced. Denial by the Respondents in their Answer created the issue. The Trial Judge held adverse to the Appellants. The issue was preserved by the grounds of appeal to the Supreme Court of South Carolina. The majority opinion of the Supreme Court of South Carolina held adverse to Appellants on the ground that the Appellants have not successfully rebutted (emphasis and parenthetical inserts in the following quotation are Appellants') "the presumption that their properties will be benefited. Their plants are near certain areas in the district known as the Una and Johnson City communities. The undisputed testimony shows that unsanitary conditions are prevalent in these two communities and constitute a health menace." (The testimony does not show that unsanitary conditions are prevalent in these two communities. Nor does it show the existence of any health menace. It does indicate that there are some situations in these two communities which under certain possibilities could become unsanitary. Any unsanitary situation which might develop could be corrected by the property owner involved, and if he did not do so could be abated, at no cost to the taxpayers, under existing law of South Carolina, to wit, Section 32-1 *et seq.*, Code of Laws of South Carolina, 1952, and Act No. 870 of the Acts of 1952, 1952 Statutes at Large of South Carolina, 2134, and the regulations adopted pursuant thereto and authorized thereunder. See particularly the State Board of Health's Rules and Regulations on "Nuisances—Defined" and "Pit Privies" appearing on page 620 of Vol. 7 of Code of Laws of South Carolina, 1952, and on "Septic Tanks" appearing on page 644 of said Vol. 7 of said Code. That the South Carolina State Board of Health and the Spartanburg County Board of Health have taken no action is persuasively indicative that no present or potential health menace exists

in either of these two communities.) "The danger does not always stop at the boundaries of such areas but may extend to the entire neighborhood." (*I. e.*: how far a fly with a tail wind may fly; a second fly with a tail wind may fly; and so on.) "When these unsanitary conditions are removed, it **may** result in the improvement of public health throughout the district." (and on infinititum.) "It further appears that several of the Appellants have considerable undeveloped acreage surrounding their plants which may be benefited by the installation of a publicly operated water and sewer system. It is well known as pointed out in *Floyd v. Parker Water & Sewer System District, supra,* 203 S. C. 276, 17 S. E. (2d) 233, that the installation of water and sewer facilities generally results in considerable enhancement of property values." (The Court overlooked that it was an undisputed fact, stipulated by the parties, that all lands of the Appellants are adequately served by existing and entirely adequate water and sewer systems.) "A further consideration is the fact that corporate authorities in the district are authorized to provide for garbage disposal, **a facility not previously enjoyed by anyone in the district.**" (As is clearly shown in the Petition for Rehearing, the special Act makes no findings in regard to this and there is no testimony in the record thereabout. In truth, a substantial portion, if not all, of the residences and the buildings of the southern one-half of the district are now, and have been for some time, served by private or commercial garbage disposal organizations.) As so ably stated by Mr. Justice Legge, writer of the minority opinion: "I confess my inability to perceive, in this situation, any reasonable prospect of benefit to the Appellants' properties. On the contrary, it seems obvious to me that inclusion, in the proposed district, of the area lying south of the Southern Railway main line was for the benefit not of that area, but of the two small communities north of the rail-

road, to which reference has been made. *Myles Salt Co. v. Board of Commissioners, supra,* was decided on the pleadings, and the act there involved was one creating a drainage district; but the following language of the opinion in that case is applicable here:

> "'It is to be remembered that a drainage district has the special purpose of the improvement of particular property, and when it is so formed to include property which is not and cannot be benefited directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation. *Phillip Wagner v. Leser, supra* (239 U. S. 207, 36 S. Ct. 66, 60 L. Ed. 230). We are not dealing with motives alone, but as well with their resultant action; we are not dealing with disputable grounds of discretion or disputable degrees of benefit, but with an exercise of power determined by considerations not of the improvement of plaintiff's property, but solely of the improvement of the property of others—power, therefore, arbitrarily exerted, imposing a burden without a compensating advantage of any kind.'"

THE QUESTIONS ARE SUBSTANTIAL

The majority opinion of the Supreme Court of South Carolina holds that the Special Act and its application are valid under the due process of law and equal protection of the laws provisions of the Constitution of the United States.

1. The holding denies to Appellants and all others similarly situated in South Carolina the Constitution of the United States guarantees of due process of law and equal protection of the laws.

2. It is in direct conflict with the holdings of the Supreme Court of the United States in *Myles Salt Co. v. Board of Commissioners,* 239 U. S. 478, 60 L. Ed. 392, *Kansas City Southern Railroad Company v. Road Improvement District No. 6,* 256 U. S. 658, 65 L. Ed. 1151, and *Nashville, C. & St. L. R. Co. v. Walters,* 294 U. S. 405, 79 L. Ed. 949.

"It is to be remembered that a drainage district has the special purpose of the improvement of particular property, and when it is so formed to include property which is not and cannot be benefited directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation. *Phillip Wagner v. Leser, supra.* We are not dealing with motives alone, but as well with their resultant action; we are not dealing with disputable grounds of discretion or disputable degrees of benefit, but with an exercise of power determined by considerations not of the improvement of plaintiff's property, but solely of the improvement of the property of others—power, therefore, arbitrarily exerted, imposing a burden without a compensating advantage of any kind." *Myles Salt Co. v. Board of Commissioners,* 239 U. S. 478, 485, 60 L. Ed. 392, 396.

"If, however, the statute providing for the tax is 'of such a character that there is no reasonable presumption that substantial justice generally will be done, but the prob-

ability is that the parties will be taxed disproportionately to each other and to the benefit conferred, the law cannot stand against the complaint of one so taxed in fact.' *Gast Realty & Invest. Co. v. Schneider Granite Co., supra.*" *Kansas City Southern Railroad Company v. Road Improvement District No. 6,* 256 U. S. 658, 660, 65 L. Ed. 1151, 1156.

"While moneys raised by general taxation may constitutionally be applied to purposes from which the individual taxed may receive no benefit, and indeed, suffer serious detriment; *St. Louis & S. W. R. Co. v. Nattin,* 277 U. S. 157, 159, 72 L. Ed. 830, 831, 48 S. Ct. 438; *Memphis & C. R. Co. v. Pace,* 282 U. S. 241, 246, 75 L. Ed. 315, 320, 51 S. Ct. 108, 72 A. L. R. 1096; so-called assessments for public improvements laid upon particular property owners are ordinarily constitutional only if based on benefits received by them. *Myles Salt Co. v. Iberia & St. M. Drainage Dist.,* 239 U. S. 478, 60 L. Ed. 392, 36 S. Ct. 204, L. R. A. 1918E, 190; *Gast Realty & Invest. Co. v. Schneider Granite Co.,* 240 U. S. 55, 60 L. Ed. 523, 36 S. Ct. 254; *Kansas City S. R. Co. v. Road Improv. Dist.,* 256 U. S. 658, 65 L. Ed. 1151, 41 S. Ct. 604." *Nashville, C. & St. L. R. Co. v. Walters,* 294 U. S. 405, 429, 79 L. Ed. 949, 963.

3. The Special Act discriminates against all freeholders, qualified electors and residents of the area comprising the Una Water District and denies to them those fundamental and basic rights accorded by the General Law to all other freeholders, qualified electors and residents of unincorporated areas of South Carolina.

4. Determination by the Supreme Court of the United States is of paramount importance to the preservation of the constitutional guarantees of due process and equal protection not only to persons in South Carolina but to persons in every State.

It is submitted that the denial of due process and the denial of equal protection must not be allowed to stand, that the question presented by this appeal is substantial and that the question is of public importance.

Respectfully submitted,

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December 2, 1957.

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Act No. 734 of the Acts of the General Assembly of 1934; 49 Statutes at Large of South Carolina, Page 1400 Et Seq. Title 59, Sections 601-625, Inclusive, Vol. 6, Code of Laws of South Carolina, 1952 64

Act No. 582 of the Acts of the General Assembly of 1955; 38 Statutes at Large of South Carolina, Page 1292 Et. Seq. 76

MAJORITY OPINION OF SUPREME COURT OF SOUTH CAROLINA

OXNER, A. J.: This is an appeal from an order of the Circuit Court upholding the constitutionality of Act No. 582 of the 1955 Acts of the General Assembly, 49 St. at L. 1400. Appellants attack this Act upon the grounds (1) that it is special legislation in contravention of Article III, Section 34, Subdivision IX of our Constitution, and (2) that it deprives them of their property without due process of law and denies them the equal protection of the laws, in violation of both the State and Federal Constitutions.

The Act in controversy creates a public corporation to be known as "Una Water District", embracing a certain area in Spartanburg County Adjacent to the City of Spartanburg, for the purpose of having said territory served by publicly operated water and sewer systems. The corporate authorities of the district were further empowered to make provision for the collection and disposition of garbage. In the preamble to this Act it was recited that the General Assembly had found that the area involved had become populated to the extent that these facilities were "necessary and desirable for the health and welfare of the inhabitants thereof."

It is contended that there was in effect at the time of the passage of the foregoing Act a general law on the subject enacted in 1934. Appellants argue that Act No. 734 of the Acts of 1934, 38 St. at L. 1292, now comprising Sections 59-601 through 59-625 of the 1952 Code, was clearly applicable and that there was no sound reason for special legislation.

The terms of both Acts are accurately set out in the dissenting opinion of Mr. Justice Legge and need not be repeated. The major differences may be briefly stated as follows:

(1) The Act of 1955 creates a public service district. The Act of 1934, which is a general law, authorizes the formation of such a district upon a petition signed by a certain number of landowners in the proposed district followed by a favorable vote of the qualified voters. Stated differently, the landowners and qualified voters were given no voice in

the formation of the Una Water District, while they are in the formation of a district under the general law.

(2) The 1934 Act authorized the establishment of a district "for the purpose of supplying lights, and/or water and/or providing fire protection and/or providing a sewerage collection system and/or sewerage treatment plant or plants to that portion of any county in this State which is not included in any incorporated village or city." The collection of garbage is not included. The facilities covered by the 1955 Act are garbage, water and sewerage.

(3) The governing body of the Una Water District is appointed by the Governor upon the recommendation of a majority of the legislative delegation of Spartanburg County, while under the general Act the commissions are elected by the qualified voters.

(4) Under the 1934 Act the rates must be fixed at a public hearing had after due notice. This is not required under the 1955 Act.

(5) Under the 1955 Act the commissioners are authorized to make regulations compelling the residents of the district to use water and sewer facilities. There is no such authority in the 1934 Act.

We might add that under neither act can general obligation bonds be issued without a favorable vote of the qualified electors.

One of the most important fields for the exercise of the police power is the protection of public health. Unsanitary conditions within any locality are a matter of vital concern not only to those residing therein but frequently to those in adjacent areas. It was primarily for the protection of the public health that the 1934 Act authorized the formation of water and sewer districts. It will be noted that the creation of such a district was not made mandatory by this legislation. Necessarily reserved by the General Assembly was the inherent power to itself create a public corporation providing these facilities if the public health required. The exercise of this power does not depend upon the will of the landowners and residents of the area involved. When in a proper case they fail to act, the situation may be corrected by special legislation. It would

be difficult in a general law to lay down with any degree of exactness the conditions which in every case would necessitate mandatory action by the State. There are too many varying factors involved.

In the area embraced within the Una Water District, the General Assembly, after due investigation, has found that the health of the inhabitants thereof requires that there be installed publicly operated water and sewer systems and that the corporate authorities of the district should be further empowered to make provision for the collection and disposition of garbage. While these findings are not conclusive, they are entitled to great respect. The testimony taken in this case falls far short of showing that these legislative conclusions are wholly unsupported. The Circuit Judge stated in his decree:

> "In weighing the evidence in this case, this Court finds that this legislative finding of fact (that it is necessary for the inhabitants from a health and welfare standpoint to have publicly operated water and sewer systems), has not been rebutted. Plaintiffs' case fails to carry the burden of proof on this point. The defendants on the other hand fortified their position by having two sanitation employees of the Spartanburg County Health Department testify that a health survey had been made in the area as late as 1954, at which time every fifth house in the area was checked. They found an undesirable health menace prevalent throughout and stated that the area had caused the Health Department more concern than any other in Spartanburg County. The testimony indicates that there are numerous surface privies in the area, sometimes accommodating several families. There are also some septic tanks. Surface privies were definitely contaminating the wells in the area, most of which were shallow. Living organisms and gasoline were found in the wells and three or more families sometimes used one well. Unquestionably there is a definite need for water, sewer and garbage facilities in the area and this court so finds."

It appears from the record that some time prior to the passage of the legislation now under attack, a proceeding was instituted under the Act of 1929 creating the Spartanburg Metropolitan District, 36 St. at L. 992, as amended, for the purpose of creating as a water and sewer subdistrict the identical area which was incorporated in the Una District. It was contemplated in this proceeding issuing general obligation bonds in the amount of $500,000.00. This proposal was opposed by the present appellants and the proceeding is still pending. Meanwhile, the Act of 1955 was passed.

Before a subdistrict can be formed under the 1929 Act, it is necessary that a petition be filed by one-third of the freeholders in the proposed subdistrict followed by a majority vote of the qualified electors.

Evidently the General Assembly concluded that a water and sewer district covering this area would not be formed either under the 1929 Act or that of 1934 by voluntary action on the part of the freeholders and qualified electors or that the creation of same would be considerably delayed, and for the protection of the public health immediate State action was necessary. The apparent apathy on the part of some in this area doubtless led to the provision in the 1955 Act authorizing the commissioners to compel the residents to use water and sewer facilities. We do not think that the effort to remove the unsanitary conditions prevailing in this territory by special legislation was obnoxious to Article III, Section 34, Subdivision IX of the Constitution. Under the circumstances, there was no general law applicable.

The foregoing conclusion is fully sustained by numerous decisions of this Court relating to special purpose districts. In fact, some of them go much farther than it is necessary for us to go in the instant case, for here we are concerned with public health. Some of the special purpose districts which have been upheld were concerned primarily with mere conveniences or other matters no so vital to the public welfare.

In *Rutledge v. Greater Sewer District*, 139 S. C. 188, 137 S. E. 597, the Court sustained the validity of a special

act creating the "Greater Greenville Sewer District", embracing the territory known as "Greenville School District" and "Parker School District." *Alley v. Daniel,* 153 S. C. 217, 150 S. E. 691, upheld a special act establishing a sewer district in Spartanburg County to be known as "Spartanburg Metropolitan District." In *Floyd v. Parker Water & Sewer Sub-District,* 203 S. C. 276, 17 S. E. (2d) 223, this Court upheld a special act empowering the Parker Water and Sewer Sub-District, which was a special purpose district and a part of the Greater Greenville Sewer District, to issue bonds for the purpose of extending and enlarging water lines throughout the district, installing fire hydrants, establishing a fire protection system, extending the sewer lines, and instituting a system of garbage disposal. Fire protection and garbage disposal were added facilities. In *Sanders v. Greater Greenville Sewer District,* 211 S. C. 141, 44 S. E. (2d) 185, a special act was sustained providing a method whereby an area lying without the limits of the Greater Greenville Sewer District might become incorporated into that district and form a part of one of its subdistricts. Following these and other decisions along the same line, the General Assembly has created by special acts numerous water and sewer districts. In no instance has such an act been declared invalid by this Court.

Prior to the decision in *Rutledge v. Greater Greenville Sewer District, supra,* this Court had sustained legislation creating special districts for highway and bridge purposes. One of the leading cases in this category is *Briggs v. Greenville County,* 137 S. C. 288, 135 S. E. 153.

It has also been generally held that special legislation relating to the fiscal affairs of a county, including the issuance of bonds by a county, a school district or other political subdivision, is not obnoxious to Article III, Section 34, Subdivision IX of the Constitution. *Gaud v. Walker,* 214 S. C. 451, 53 S. E. (2d) 316; *State ex rel. Milford v. Brock,* 66 S. C. 357, 44 S. E. 931; *Burriss v. Brock,* 95 S. C. 104, 79 S. E. 193. In *Briggs v. Greenville County, supra,* the Court said: "It is settled by the decisions of this Court that a special act authorizing a county or other political subdivision to issue bonds is not within the constitutional prohibition."

Our attention is called to the fact that in *Rutledge v. Greater Greenville Sewer District, supra,* and the subsequent cases involving the validity of water and sewer districts, no issue was made as to Section 34, Article III of the Constitution. The omission might have been due to an assumption that as to special purpose districts the question had been settled in *Briggs v. Greenville County* and several other cases involving road districts. The failure to raise the question in the *Rutledge case* was alluded to by Mr. Chief Justice Stukes in *Owens v. Smith,* 216 S. C. 382, 58 S. E. (2d) 332. The Court there declared invalid, as special legislation, an act empowering the commissioners of a public service district in Charleston County to promulgate and enforce zoning regulations. It was stated in this case: "Appellants also cite and rely upon the cases of *Rutledge v. Greater Greenville Sewer District,* 139 S. C. 188, 137 S. E. 597, and *Floyd v. Parker Water & Sewer Sub-District,* 203 S. C. 276, 17 S. E. (2d) 223. They are distinguishable as involving public improvement districts, necessitating special legislation for their creation and operation, which appears to have been **properly** assumed in the opinions." (Emphasis ours.) Later in *Wagener v. Johnson,* 223 S. C. 470, 76 S. E. (2d) 611, the Court quoted with approval the following from the Circuit Court decree: "Numerous decisions of our Court uphold the validity of legislation creating special purpose districts, including districts established for the purpose of constructing, operating and maintaining Waterworks Systems and it is needless for me to discuss this question in further detail."

It is further argued that *Rutledge v. Greater Greenville Sewer District, supra,* is not applicable because it was rendered prior to the enactment of the general law in 1934. But we do not understand that Subdivision IX, Section 34 of Article III permits special legislation in all cases where there is no general law on the subject. After enumerating in Section 34 certain subjects concerning which local or special laws shall not be enacted, it is provided in Subdivision IX: "In all other cases, where a general law can be made applicable, no special law shall be enacted." The controlling question is not whether there is a general law on

the subject but whether a general law can be made applicable.

There may be some foundation for the statement in one of the briefs that our decisions are not entirely clear as to the basis upon which it has been held that legislation creating special purpose districts is not within the prohibition of Article III, Section 34 of the Constitution. But the reasoning is not as important as the result. As to those decisions upholding special districts created for the purpose of furnishing water, sewerage, garbage collection, etc., the writer, speaking only for himself, thinks they may be soundly sustained under Section II, Article VII of the Constitution which authorizes the General Assembly to "make special provision for municipal government." As pointed out in *Sanders v. Greater Greenville Sewer District, supra,* 211 S. C. 141, 44 S. E. (2d) 185, these are functions which are usually performed by a municipality. In fact, districts of this nature have been regarded as municipal corporations with limited functions. In *Floyd v. Parker Water and Sewer Sub-District, supra,* 203 S. C. 276, 17 S. E. (2d) 223, the Court said that the sub-district there under discussion was "a corporation or agency endowed with limited corporate functions, but they are derived from the same source and exercised in substantially the same way as any other municipal corporation. It is an arm of government created by the legislature for a specific public purpose, that is, fire protection and garbage disposal. And we find nothing in the Constitution which takes from the legislature the power to create a special district with limited powers." In *Rutledge v. Greater Greenville Sewer District, supra,* 139 S. C. 188, 137 S. E. 597, the Court said: "While the term 'municipal corporation' is generally understood to mean cities and towns incorporated under the general laws of the State, it is also true that where, as in the case at bar, a body politic and corporate is established by the Legislature with power to perform municipal functions, such as the establishment of a sewer system for the benefits of the inhabitants of such area, and with power to issue bonds for the purpose of raising funds for such purposes, that such an area being a public corporation and having certain municipal powers

and duties, is properly held to be a municipal corporation within the meaning of the section of the Constitution."

In concluding our discussion of this phase of the case, we desire to say that there may be some merit in the view that our decisions have gone rather far in upholding the constitutionality of special purpose districts, particularly in those instances where there was no real necessity for a special act. But upon the strength of them millions of dollars in bonds have been issued and are outstanding. In this field, as in the case of the law relating to real estate, it is very important that there be stability and uniformity in our decisions.

The next question is whether the Act denies appellants the constitutional guaranty of due process of law and the equal protection of the laws.

Appellants point out that at considerable expense they have heretofore installed water and sewer facilities which adequately serve their plants and have also permitted all individual property owners who so desire to tap their lines. For this reason, it is said they will receive no benefit from the contemplated public improvements. It is also contended that the boundaries of the district were arbitrarily fixed by the Legislature with the view of requiring appellants, large taxpayers, to assume the major burden of supporting the district.

We do not think that the mere fact that a taxpayer has installed water and sewer facilities which are adequate to serve his property precludes the General Assembly from thereafter incorporating his lands in a publicly operated water and sewer district. The right of the sovereign to improve is paramount and a voluntary improvement for the owner's own convenience cannot be used to relieve him from his share of the costs where it has been determined that a general improvement is necessary. Appellants installed these facilities with ful knowledge of the possibility that this area might later be incorporated in a public improvement district. Applicable is the following language of the Court in *Mayor, etc. of Atchison v. Price*, 45 Kans. 296, 25 P. 605:

"Some of the defendants in error had constructed private sewers or drains at their own expense, and they now claim that they should not be taxed for the sewer built by the city. While one of these drains was quite expensive, it is not found or stated that any of them were authorized or adopted by the city as a part of the sewer system, nor that they are suitable or adequate for the purposes intended. The legislature has conferred upon the city authorities the discretion and power to provide sewerage facilities, and for that purpose has given them control of the streets and alleys where the sewers are built. They are to determine the necessity for sewers, as well as the character and capacity of those that are required to be built. To allow property owners to decide for themselves whether their lots needed sewerage facilities, or to permit them to provide private ditches, drains, sewers, or cess-pools as they might determine to be sufficient, would be wholly impracticable, and would prevent the adoption of a general sewerage system under the control of the city, as the statutes evidently contemplate."

There are other decisions to the same effect. *City of Philadelphia v. Odd Fellows' Hall Association*, 168 Pa. St. 105, 31 A. 917; *Hempel v. Rogers TP. et al.*, 313 Mich. 1, 20 N. W. (2d) 787; *North Pacific Company v. City of Portland*, 80 F. (2d) 738. In the last mentioned case it was held that the fact that a railroad terminal company had constructed a private sewer system adequate for its needs did not preclude assessment of its property, on the basis of benefits received, for construction of a city sewerage system.

It may not be amiss to point out that the commissioners of the Una District are authorized by the Act to "purchase, acquire and continue the use and operation of any and all of the water lines and sewer lines that may presently exist in the area." It is fair to assume that under this provision appellants will be compensated for any of their lines which are suitable for use in the plans adopted by the Commissioners.

We cannot say that the Legislature palpably abused its discretion in fixing the boundaries of this district. Its creation was an act of sovereignty. The Legislature itself may create a district of this kind and fix its boundaries. Where it does so, the landowners included therein are not entitled to a hearing on the question of whether their lands will be benefited. Prior inquiry by the legislative body is presumed. *Sanders v. Greater Greenville Sewer District, supra,* 211 S. C. 141, 44 S. E. (2d) 185. The Legislative determination can be assailed under the due process and equal protection clauses "only where the legislative action is 'arbitrary, wholly unwarranted,' 'a flagrant abuse, and by reason of its arbitrary character a confiscation of particular property.'" *Branson v. Bush,* 251 U. S. 182, 40 S. Ct. 113.

It is equally well settled that to justify an assessment of benefits to particular lands, it is not essential that the benefits be direct or immediate. *Valey Farms Co. v. County of Westchester,* 261 U. S. 155, 43 S. Ct. 261. Nor is there any requirement "that for every payment there must be an equal benefit." *Houck v. Little River Drainage District,* 239 U. S. 254, 36 Ct. 58. Due process does not require absolute equality. *Sanders v. Greater Greenville Sewer District, supra.* In *Kansas City Southern Ry. Co. v. Road Imp. Dist. No. 3,* 266 U. S. 379, 45 S. Ct. 136, the Court said: "True, the amount of benefits which will accrue to the railway property is largely a matter of forecast and estimate; but the same thing is true of the farm lands and town lots, and also of benefit assessments in general. * * * Forecast and estimate, based on a solid premise of fact and experience, are not to be confused with mere speculation and conjecture."

Reverting now to the facts of this case, the area comprising the Una Water District constitutes a part of the Spartanburg Metropolitan District created in 1929. Since that time there has been a six mill levy on all property in the master district for sewerage disposal. No benefits have accrued from this tax assessment to any of the property owners in the Una District except those who have privately installed water and sewer facilities. Adjoining the Una District are the City of Spartanburg and several water and sewer subdistricts. It is probable that the Legislature was

undertaking to provide a general and comprehensive water and sewerage system for those areas which had developed around the City of Spartanburg and in doing so found it was not practicable to exclude appellants' lands and other small portions now served by these facilities. But be that as it may, we cannot say that the fixing of the boundaries of the Una Water District was a flagrant abuse of legislative discretion.

Nor can we say that appellants have successfully rebutted the presumption that their property will be benefited. Their plants are near certain areas in the district known as the Una and Johnson City communities. The undisputed testimony shows that unsanitary conditions are prevalent in these two communities and constitute a health menace. The danger does not always stop at the boundaries of such areas but may extend to the entire neighborhood. When these unsanitary conditions are removed, it may result in the improvement of public health throughout the district. It further appears that several of the appellants have considerable undeveloped acreage surrounding their plants which may be benefited by the installation of a publicly operated water and sewer system. It is well known, as pointed out in *Floyd v. Parker Water & Sewer District, supra,* 203 S. C. 276, 17 S. E. (2d) 223, that the installation of water and sewer facilities generaly results in considerable enhancement of property values. A further consideration is the fact that the corporate authorities of the district are authorized to provide for garbage disposal, a facility not previously enjoyed by anyone in the district. While appellants may receive considerable less benefits than those property owners now without sewerage and water, we would not be warranted in saying that the tax burden which will be placed upon them will so materially exceed the benefits received as to be palpably arbitrary.

The only other question raised by the exceptions is whether the Circuit Judge erred in not requiring respondents to produce the "report of Harwood Beebe Company as to the layout, cost and other matters with respect to the proposed water and sewer systems in the District." It appears that as far back as 1946 a group of interested citizens

initiated a movement to obtain water and sewerage for the area now embraced in the Una Water District and engaged the Beebe Company, local engineers, to draw some plans and specifications and make cost estimates pertaining to the area. This data was used several years ago in a proceeding before the commissioners of public works wherein it was sought to obtain sewerage for this area under the act establishing the Spartanburg Metropolitan District. Respondents, who were not parties to that proceeding, testified that they had seen the plans made by the Beebe Company but did not have them and did not know where they were. We agree with the trial Judge that appellants should have subpoenaed the members of this firm and required them to bring the plans into court. We find no error.

All exceptions are overruled and the order of the Circuit Court affirmed.

TAYLOR and MOSS, JJ., concur. LEGGE, J., and G. DUNCAN BELLINGER, A. A. J., dissent.

MINORITY OPINION OF THE SUPREME COURT OF SOUTH CAROLINA

LEGGE, A. J. (Dissenting): Being unable to agree with the majority of the court in their view of this case, I shall record as briefly as may be the reasons that compel my dissent.

In two cases consolidated in the trial court, appellants, individually and on behalf of other taxpayers in Una Water District in Spartanburg County, attacked Act No. 582 of the 1955 General Assembly as unconstitutional; and from an adverse decree they now appeal. With this court's permission, North Charleston Public Service District has intervened on the side of the respondents, and its counsel have filed a brief, in which counsel for numerous "special purpose" districts have joined, in support of the circuit decree. Two substantial issues are here presented, *viz.*:

1. Is the act special legislation within the prohibition of Subdivision IX of Article III, Section 34, of the Constitution of 1895?

2. Is the effect of said act to deprive appellants of property without due process of law in violation of

Section 1 of the Fourteenth Amendment of the Constitution of the United States and Article I, Section 5, of the Constitution of this State?

The Act in question (Act of May 19, 1955, XLIX Stat. at L. 1400) is entitled:

"AN ACT to Create Una Water District in Spartanburg County, to Define its Area; to Establish a Governing Commission therefor; to Prescribe the Functions and Powers of the District and its Commission; to Make Provision for Borrowings by the District, Including the Issuance of not Exceeding Five Hundred Thousand Dollars of General Obligation Bonds; to Prescribe the Terms and Conditions under which Monies may be Borrowed by the District; and to Make Provision for their Payment."

Its preamble recites that the General Assembly, after due investigation, has found that the district in Spartanburg County created by the act "has become populated to an extent that makes it necessary and desirable for the health and welfare of the inhabitants thereof to be served by publicly operated water and sewer systems, and that in addition thereto the district hereby created should be empowered to make provision for the collection and disposition of garbage for the district", and that as a consequence of such findings the General Assembly has determined to constitute the area a "special purpose district" and to provide "a governing body for the district" with the powers enumerated in the act.

Section 1 creates as a public corporation, to be known as Una Water District, an area in Spartanburg County lying to the northwest of and adjacent to the city of Spartanburg.

Section 2 provides that the district shall be operated and managed by a commission, to be known as "Una Water District Commission", composed of three electors resident in said district, to be appointed by the Governor upon the recommendation of a majority of the legislative delegation of Spartanburg County, and to hold office, initially, for terms of two, four and six years respectively. It provides for the appointment in like manner, but for a term of six

years, of a successor upon the termination of office of any commissioner, and that a vacancy during term of office occurring by reason of death, resignation or otherwise shall be filled by like appointment for the remainder of the term.

Under Section 3 there is committed to the district "the functions of purchasing, acquiring, constructing, operating, maintaining, improving and extending a water distribution system, a sewer system, and a system for the collection and disposition of garbage"; and to that end the powers of the commission are detailed in twenty-two subsections. Those relating to the fixing of rates and the issuance of bonds are as follows:

> Subsections 13 and 14 empower the commission to "place into effect and to revise, whenever it so wishes" schedules of rates and charges for water furnished by its water distribution system and for use of its sewage disposal system.
>
> Subsection 19 empowers the commission to issue, under the conditions prescribed by Section 21, general obligation bonds of the district to an amount not exceeding $500,000.00.
>
> Subsection 20, together with its nine subdivisions, provides that, in addition to its powers under subsection 19, the commission may borrow money and issue bonds, notes and other evidences of indebtedness payable solely from revenues derived from the operation of any revenue producing facility. It further provides, as a convenient procedure for borrowing money pursuant to said subsection, that the district shall be fully empowered to avail itself of all powers granted by Sections 59-361 through 59-415 of the 1952 Code, generally known as the Revenue Bond Act For Utilities, and by Sections 59-651 through 59-682, generaly known as the Revenue Bond Refinancing Act of 1937.
>
> Subsection 21 provides that the proceeds of the general obligation bonds of the district shall be used to defray the cost of purchasing, constructing and establishing in the district a water system or a sewer system, or both, together with expenses incident to such purchase, construction and establishment; and

that such bonds shall be issued only in the event that in a special election provided for under subsection 22 a majority of the qualified electors of the district shall have voted in favor of such issue. Subdivision (a) of subsection 21 provides that such bonds may be issued a single issue or from time to time as several separate issues, and that maturities, interest rates and call provisions may be fixed by the commission. Subdivision (b) provides that such bonds shall be sold at not less than par plus accrued interest to date of delivery; that the commission shall, at least ten days prior to any sale, publish notice of its intention to receive bids for such bonds, reserving the right to reject any and all bids; and that, if all bids shall be rejected, the commission may negotiate privately for the disposition of such bonds.

Section 4 provides that revenues not required to discharge covenants under obligations authorized by the act shall be used by the commission for purposes germane to the functions of the district.

Section 5 declares that rates fixed by the commission for services furnished by any revenue producing facility shall not be subject to supervision or regulation by any bureau, commission or other like agency of the State.

Section 6 exempts the property and income of the district from all state, county and municipal taxes.

Section 7 provides that, so long as any obligations of the district issued pursuant to the act shall be outstanding, the powers granted by the act to the district and the commission shall not be diminished or restricted.

Section 8 provides a penalty for wilful injury to or impairment of any facility of the district, and for obtaining water from its distribution system otherwise than in accordance with regulations promulgated by the commission.

Section 9 provides that unconstitutionality of any part of the act shall not affect the validity of the remainder.

Section 10 repeals inconsistent acts.

Section 11 declares the act effective upon the Governor's approval.

Una Water District, as created by the act before mentioned, is crossed by the main line of the Southern Railway, running generally east-west and dividing the district into two parts of approximately equal area. In the southern area are the textile plants of the appellants Mills Mill (Saxon Plant) and Powell Knitting Company, and the textile machinery warehouse and offices of the appellant Draper Corporation. The manufacturing plant of Spartanburg Concrete Company, Inc., is in the northern area. Also located in the northern area are two suburban communities known respectively as Una and Johnson City. The Spartanburg County Home and a tuberculosis hospital are located in the extreme northwestern portion of the district.

On th tract of land owned by Mills Mill, comprising about 160 acres, are located its manufacturing plant known as the Saxon Plant, and twenty-four residences owned by the corporation and occupied by its employees; and immediately adjacent to this tract are one hundred seventy-seven residences recently sold by the corporation to its employees. These properties together constitute what is generally known as the Saxon Mill Village or Community, which is adequately served by a water system and a sewer system with all necessary lateral lines. These systems were installed by the predecessor in title of Mills Mill, are owned by Mills Mill, and are connected with the water and sewer lines of Spartanburg Water Works.

Draper Corporation's warehouse and offices are located on a 25-acre tract owned by it. In addition, the corporation formerly owned, and recently sold, some nine or ten acres on which it had constructed fifteen houses for its employees. About 1929 the corporation installed a complete system of water and sewer lines, which are connected with the water and sewer lines of Spartanburg Water Works and which adequately serve the warehouse and offices and houses before mentioned.

Powell Knitting Company owns a tract of about 85 acres, on which are located its manufacturing plant and eleven residences occupied by some of its employees; recently it sold to its employees approximately eighteen acres adjoining this tract, on which there were and are forty-five

dwellings. Powell Knitting Company heretofore installed on these tracts a water system and a sewer system, which are still in operation and adequately serve all manufacturing and domestic purposes on said tracts. The company has conveyed the water system to the Commissioners of Public Works, but still owns the sewer system.

Spartanburg Concrete Company has itself provided water and sewage facilities adequate to serve its manufacturing and domestic needs.

Una Water District will obtain its water supply from the Spartanburg municipal waterworks system, with which the private systems of the respective appellants are already connected as before stated.

Testimony on the part of the appellants indicates that in the portion of the district lying to the south of the Southern Railway tracks there are, in addition to the 272 residences served by the water systems of appellants before mentioned, 289 residences that are served by the Spartanburg waterworks system, and only 24 that are not served. On the other hand, it is apparent from the evidence that the residences in the Una and Johnson City communities, in the northern portion of the district, are substandard in respect of both water and sewage disposal, depending for their water supply upon wells for the most part shallow and unprotected against pollution, and having no sewage disposal arrangements other than septic tanks; and that the situation thus existing is, from the standpoint of public health, undesirable and fraught with some degree of hazard.

The assessed valuation for tax purposes of the properties of Mills Mill, Draper Corporation and Powell Knitting Company amounts in the aggregate to about one-third of the total assessed valuation of all property in Una Water District. Respondents propose to issue $500,000.00 of general obligation bonds, retirement of which, over a period of twenty years, would require an additional property tax levy of between thirty and thirty-four mills, depending upon the rate of interest.

A legislative enactment is presumed valid, and will not be declared unconstitutional unless its conflict with some provision of the constitution appears so clearly as to leave

no room for reasonable doubt. *Bolt v. Cobb*, 225 S. C. 408, 82 S. E. (2d) 789; *Edens v. City of Columbia*, 228 S. C. 563, 91 S. E. (2d) 280; *State ex rel Thompson v. Seigler*, 230 S. C. 115, 94 S. E. (2d) 231. The high prerogative of the courts to determine the limits of the power of the legislature under the constitution is to be exercised with the utmost care and circumspection. *Doran v. Robertson*, 203 S. C. 434, 27 S. E. (2d) 714.

Where the constitutionality of an act depends upon pertinent facts, the findings and declarations of the legislature are entitled to great respect. *State ex rel Edwards v. Query*, 207 S. C. 500, 37 S. E. (2d) 241; *Richards v. City of Columbia*, 227 S. C. 538, 88 S. E. (2d) 683. But if such findings and declarations were conclusive, the legislature itself would be the final arbiter of its own power, and there could be no effective constitutional control. *Doran v. Robertson, supra.*

The issue of constitutionality *vel non* is therefore, in the final analysis, a judicial, not legislative, matter, *Kalber v. Redfearn*, 215 S. C. 224, 54 S. E. (2d) 791; and where a legislative enactment clearly infringes on constitutional restraints, the court should not hesitate to so declare, nor should it evade this responsibility by forced construction of constitutional provisions. *State ex rel Edwards v. Osborne*, 195 S. C. 295, 11 S. E. (2d) 260.

Article III, Section 34, of the Constitution of 1895, after declaring that the General Assembly shall not enact local or special laws concerning certain subjects or for certain purposes set forth in subsections 1 through VIII (not pertinent here), provides in subsection IX as follows:

> "In all other cases, where a general law can be made applicable, no special law shall be enacted."

On March 2, 1934, the Governor approved an Act of the General Assembly (XXXVIII Stat. at L. 1292) entitled:

> "AN ACT to Authorize the Establishment of Electric Lighting Districts, Water Supply Districts, Fire Protection Districts, and Sewer Districts in Communities which are not Incorporated as Towns or Cities and to Authorize such District to Issue Bonds for the Cost of Construction of Electric Lighting, Water Sup-

ply, Fire Protection, and Sewage Plants, to Levy Taxes for the Payment of the Same and for the Creation of Commissions for the Control and Management of Electric Lighting Districts, Water Supply Districts, Fire Protection Districts, and Sewer Districts so Created, and Defining their Powers and Duties."

That Act was codified in 1942 as Sections 8555-131 8555-140; it appears in the 1952 Code as Chapter 4 of Title 59 (Sections 59-601 through 59-625), and it is still in effect. Its provisions, as last codified, are as follows:

"59-601. In order to protect the public health, electric lighting districts, water supply districts, fire protection districts and sewer districts may be established as herein provided for the purpose of supplying lights and/or water and/or providing fire protection, a sewerage collection system and/or a sewerage treatment plant to a portion of any county in this State which is not included in any incorporated city or town."

We note, in passing, that Una Water District, as created by the Act of 1955, lies in a portion of Spartanburg County which is not included in any incorporated city or town.

59-602 provides that before any such district is formed there shall be filed with the clerk of the court of the county in which such district is proposed to be located: (1) a petition signed by a majority of the resident landowners in the proposed district or by the owners of more than half the land and acreage, as shown by the tax assessment rolls, to be affected by or assessed for the expense of the proposed improvements; and (2) a plat showing the limits of the proposed district.

59-603. When the clerk of court shall have approved the petition, he shall call an election of the qualified voters of the district to vote upon the establishment of the district and of the electric light, water supply, fire protection and/or sewerage plant.

59-604 provides tha only those electors shall be allowed to vote who return real and personal property for taxation within the district and who exhibit their tax receipts and registration certificates as required in the general election.

We are not here concerned with the validity of these restrictions, but see *Cothran v. West Dunklin Public School District*, 189 S. C. 85, 200 S. E. 95.

59-605 provides that the clerk of court shall select the place for the holding of the election, appoint managers, and give notice of the time and place of the election.

59-606 provides that at the said election the qualified voters, in addition to voting on the question of establishing the district and the utilities involved, shall elect three commissioners of the district, who shall hold office for a term of six years and until the election and qualification of their successors; the members of the first commission to have terms of two, four and six years respectively, and thereafter one commissioner to be elected at each state biennial election.

59-607 provides that the newly elected commissioners shall meet and organize, elect a chairman, and determine by lot which of them shall hold the two, four and six year terms respectively.

59-608 provides that the commissioners shall serve without emolument, but shall appoint a paid secretary.

59-609 gives to the board of commissioners broad general powers, e. g.; (1) to purchase, build or contract for building electric light, water supply, fire protection and sewerage systems; (2) to lease, own, hold and acquire all necessary equipment for such purposes, and operate the same; (3) to contract with existing light and water companies and municipalities or other districts; and (4) to fix rates for the use of lights, water, fire protection and sewerage facilities.

59-610 requires that the plat showing the limits of the district be filed with the county auditor.

59-611, reciting that the purpose of the establishment of such districts is to provide better sanitary conditions for the people thereof, provides that the boards of commissioners of such districts shall have power of condemnation for such purpose.

Sections 59-612 through 59-615 relate to the establishment of rates by the board of commissioners, and provide, among other things, that no such rates shall be established

except after a public hearing, notice of which, setting forth the proposed schedule of rates, shall be published at least ten days prior to the date of the hearing.

Sections 59-616 through 59-620 provide for the issuance by the commissioners of serial coupon bonds to meet the cost of constructing or acquiring the utilities involved; that such bonds shall bear interest not exceeding six per cent per annum, and the last of them shall mature not more than twenty years after the date of issue; and that before any such bonds are issued the question of their issuance shall be submitted to the qualified voters of the district, and approved by a majority of them voting, at an election to be held upon the written petition or request of at least one-third of the resident electors and a like proportion of the freeholders.

Section 59-621 exempts such bonds from state, county and municipal taxation.

Section 59-622 authorizes the commissioners to avail themselves of Federal loans and to issue revenue bonds in liquidation of such loans.

Sections 59-623 and 59-624 provide for submission of annual budgets to the county supervisor when the income derived from the public works is insufficient to meet the cost of maintenance and operation; and for the levy of taxes to meet such expenses.

Section 59-625 reads as follows: "This chapter being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purposes thereof. But all functions, powers and duties of the State Board of Health shall remain unaffected by this chapter."

We are not concerned here with inquiry as to whether, as was indicated in *State v. Higgins*, 51 S. C. 51, 28 S. E. 15, 38 L. R. A. 561, Article III, Section 34, Subdivision IX prohibits enactment of a special law on a subject as to which a general law would be appropriate, where no such general law has been enacted. Here a general law on the subject has been enacted and was in effect at the time of the passage of the special act. The issue before us under Article III, Section 34, Subdivision IX is simply this: Could the general law (Code, 1952, Title 59, Chapter 4) have been made applicable in the establishment of Una Water District?

In the writer's view, the general law was clearly applicable. The 1955 act suggests no sound reason to the contrary; certainly none is to be found in its preamble to the effect that the area had become populated to the extent that publicly operated water and sewer systems were necessary and desirable for the health and welfare of its inhabitants. The general law was by its express language (Code, 1952, Sections 59-601, 59-625) enacted for the protection of the public health and welfare, and was obviously designed to cover just such a situation as the present.

Nor does the 1955 act or the record before us suggest any reason why the qualified electors in the area in question should be deprived of the rights accorded under the general law to vote upon the question of the establishment of the water district, to elect the commissioners thereof, and to be heard concerning rates and service charges proposed to be fixed by the commissioners. Cf. *Town of Forest Acres v. Town of Forest Lake*, 226 S. C. 349, 85 S. E. (2d) 192.

Can the 1955 act be sustained, then, as a special provision in such general law within the meaning of Article III, Section 34, Subdivision X? I think not, because its denial of the rights referred to above was a radical departure from essential principles of the general law. *State ex rel Schroder v. Burns*, 73 S. C. 194, 52 S. E. 960.

I am unable to agree with respondents' contention that the issues here are foreclosed in their favor by earlier decisions upholding acts creating special districts. Not all of the decisions can be reconciled; but it is apparent from review of them that where special acts have been upheld against the claim of unconstitutionality under Article III, Section 34, Subdivision IX, the decision has been based upon the absence, assumed or proven, of applicable general laws; and that the constitutional sanction of "special provisions in general laws" may not be invoked to sustain a special act that radically departs from essential principles of applicable general law.

In *Carolina Grocery Company v. Burnet*, 61 S. C. 205, 39 S. E. 381, 58 L. R. A. 687, a general act providing for the government of the various counties of the state had been amended so as to make special provisions for the government of certain counties. As against attack under

Subdivision IX (then XI) of Section 34 of Article III, the act, so far as it related to Charleston County, was upheld as a special provision in the general law within the proviso in Subsection X (then XII); and it was there pointed out that Article III, Section 34, should be construed in connection with Article VII, Section 11, authorizing the General Assembly to provide such system of township government as it might think proper in any and all counties, and to make special provision for municipal government. Here it was said that while in its strict sense the term "municipal" connotes incorporated cities, towns and villages, it could properly be construed as characterizing the government "of a county or township."

In *Arnette v. Ford*, 129 S. C. 526, 125 S. E. 138, following *Walker v. Bennett*, 122 S. C. 389, 118 S. E. 779, a special act consolidating several school districts was held valid as a special provision in the general school law. To like effect was the decision in *Powell v. Hargrove*, 136 S. C. 345, 134 S. E. 380.

In *Battle v. Willcox*, 128 S. C. 500, 122 S. E. 516, which involved an act authorizing the Commissioners of Marion County to issue bonds of Reaves Township for the establishment of a hospital, there was no issue under the constitutional provisions with which we are presently concerned.

Briggs v. Greenville County, 137 S. C. 288, 135 S. E. 153, involved the validity of bonds proposed to be issued by the county under authority of the so-called "Greenville Bond Act" (XXXIV Stat. at L. 1534) to finance the construction in that county of highways embraced within the State Highway System, said bonds to be secured by the county under reimbursement agreement pursuant to the general highway act commonly known as the "Pay-As-You-Go Act" (XXXIII Stat. at L. 1193) as amended by the General Bond Act of April 2, 1926 (XXXIV Stat. at L. 1001) which authorized the issuance by counties of bonds for such purpose. With regard to the contention that the Greenville Bond Act violated the constitutional provision against special legislation, the court sustained the act as a special provision in the general law. It would seem that the act might also have been sustained under the constitutional amendment of February 18, 1905 (Const. Am. Art. II) pro-

viding that "the General Assembly of this State may enact local or special laws concerning the laying out, opening, altering or working roads or highways"; but this provision was not mentioned. It is true, as respondents point out, that the opinion in that case contains the statement that "a special act authorizing a county or other political subdivision to issue bonds is not within the constitutional provision" (*i. e.*, Article III, Section 34, Subdivision IX); but this pronouncement was not necessary to the decision of the issue, nor do I think that *Sullivan v. City Council of Charleston,* 133 S. C. 189, 130 S. E. 876, 133 S. E. 340, and *City of Columbia v. Smith,* 105 S. C. 348, 89 S. E. 1028, cited as authority for it, warrant it.

The same broad statement, with citation of the same two cases as authority for it, appears in *Evans v. Beattie,* 137 S. C. 496, 135 S. E. 538, which was decided three days before the *Briggs case;* and the same comment is applicable. *Evans v. Beattie* involved the Coastal Highway Act of 1926, which constituted the territory embraced within six counties a highway district and provided for the construction of certain highways therein, and for the financing of such construction. The contention that the act was special legislation within the purview of Article III, Section 34, Subdivision IX was properly rejected in view of the constitutional amendment of February 18, 1905 (Const. Am. Art. II) to which we have already referred.

The cases of *City of Columbia v. Smith* and *Sullivan v. City Council of Charleston, supra,* cited in the *Briggs* and *Evans cases,* deserve brief mention.

In the *Smith case* it was held that a special act relating to the drawing of juries in the Recorder's Court of the City of Columbia was not within the prohibition of Article III, Section 34, Subdivision IX, in view: (1) of the other constitutional provisions with which it must be construed, and which empower the General Assembly (Article V, Section 1) to establish municipal and other inferior courts and (Article VIII, Section 1) to provide by general laws for the organization and classification of municipal corporations; and (2) of the decisions in *City of Greenville v. Foster,* 101 S. C. 318, 85 S. E. 769, which upheld the act establishing the Recorder's Court of the City of Greenville, and *State ex rel*

Spencer v. McCaw, 77 S. C. 351, 58 S. E. 145, where an act extending the boundaries of a school district had been upheld as a special provision in the general law.

In the *Sullivan case*, where the validity of certain certificates of indebtedness of the City of Charleston was in issue, the act authorizing their issuance was attacked under Article III, Section 34, Subdivision IX, and it was also contended that such certificates would create a new indebtedness in violation of Article II, Section 13 and Article VIII, Section 7. These contentions were brushed aside without discussion, the majority opinion merely stating that they were untenable in the light of *Thomas v. Spartanburg Ry. Gas & Electric Co.*, 100 S. C. 478, 85 S. E. 50, *City of Columbia v. Smith, supra*, and *Barnwell v. Matthews*, 132 S. C. 314, 128 S. E. 712. But none of the three cases thus cited really supports the Sullivan decision. We have already discussed *City of Columbia v. Smith, supra*. In *Barnwell v. Matthews, supra*, the only constitutional provision invoked against the county bond issue in question was Article X, Section 5; there was no issue under Article III, Section 34. And in *Thomas v. Spartanburg Ry. Gas & Electric Co., supra*, the act, which required the street railway cars operating north of a line ten miles north of and parallel to the thirty-first meridian be equipped with fenders, was held not violative of Article III, Section 34, Subdivision IX because the classification was not arbitrary in view of the steep grades and sharp curves in trackage in that section of the State lying north of the line referred to.

Rutledge v. Greater Greenville Sewer District, 139 S. C. 188, 137 S. E. 597, sustained an issue of bonds by the commissioners of the district under a special law creating, as Greater Greenville Sewer District, the area embraced within two school districts in Greenville County. No issue under Article III, Section 34, of the Constitution was raised in that case. Moreover, it was decided prior to the enactment of the general law that is now Chapter 4 of Title 59 of the 1952 Code.

Respondents also cite, as authority for sustaining the act here under review, *State ex rel. Richards v. Moorer*, 152 S. C. 455, 150 S. E. 269, which was concerned with the issuance of certificates of indebtedness under the State High-

way Act of March 14, 1929. But the precise issue involved in the case at bar under Article III, Section 34, Subdivision IX, does not appear to have been raised in that case. Indeed in its only reference to Article III, Section 34 (152 S. C., pp. 486, 487), the court, dismissing as without merit the contention "that the provisions of the act creating highway districts are in conflict with Section 5 of Article X and Section 34 of Article III and other sections of the Constitution which recognize and adopt certain kinds of political subdivisions for purposes of local government," declared that the questions raised thereabout had been decided adversely to such contention in *Briggs v. Greenville County* and *Evans v. Beattie*. Incidentally, the constitutional amendment of February 18, 1905 (Const. Am. Art. II), to which reference was made in *Evans v. Beattie*, does not appear to have been discussed.

Nor was Article III, Section 34, Subdivision IX involved in *Alley v. Daniel*, 153 S. C. 217, 150 S. E. 691, where the act creating the Spartanburg Metropolitan District was upheld against the single contention that its title was insufficient under Article III, Section 17. Article III, Section 34, Subdivision IX, was not in issue in *Clarke v. South Carolina Public Service Authority*, 177 S. C. 427, 181 S. E. 481, or in *Benjamin v. Housing Authority of Darlington County*, 198 S. C. 79, 15 S. E. (2d) 737. And in *Floyd v. Parker Water and Sewer Subdistrict*, 203 S. C. 276, 17 S. E. (2d) 223, the only constitutional ground of attack was under Article X, Section 5. Also cited by respondents is *Ashmore v. Greater Greenville Sewer District*, 211 S. C. 77, 44 S. E. (2d) 88, 173 A. L. R. 397, which was concerned with an act providing for an auditorium and community center for the district, involved no contention under Article III, Section 34, Subdivision IX, and is not pertinent to the issue now before us.

In *Gaud v. Walker*, 214 S. C. 451, 53 S. E. (2d) 316, an act under which provision was made for the establishment of the present "County Council" government of Charleston County was assailed on several constitutional grounds, among them that the provisions of the act constituted a special law in violation of Article III, Section 34, Subdivision IX. The court, upholding the act against this

contention, cited *Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421, to the effect that the constitution of 1895, unlike that of 1868, contained no provision establishing a uniform or definite form of county government; pointed out that the diversity of governmental policies among the several counties as evidenced by the statutes relating to county government indicated an opinion on the part of the General Assembly that varying conditions in the respective counties precluded uniformity of treatment in relation to the administration of county affairs; declared, as had been said in *Carolina Grocery Company v. Burnet, supra*, that Article III, Section 34, Subdivisions IX and X were to be construed in the light of Article VII, Section 11; and held certain of the challenged provisions of the act valid under the power of the General Assembly to make special provision for municipal government. It struck down, as violative of Article III, Section 34, and Article VIII, Section 1, those provisions of the act that purported to empower the County Council "to enact reasonable ordinances and promulgate reasonable regulations for the preservation of public health, safety and morals." Mr. Justice Oxner's discussion of that phase of the case is appropriate to the issue here involved. Speaking for a unanimous court, he said:

> "We have just discussed rather fully the constitutional provisions relating to the government of cities and towns and the authority of the General Assembly to vest in them the police power. Respondents argue that the General Assembly may likewise vest the police power in counties. It is not necessary to determine on this appeal whether this may be done under a general statute. The precise question here is whether the police power may be delegated to the corporate authorities of one county and withheld as to all others. Obviously, in view of Section 1, Article VIII of the Constitution, no such distinction could be made between towns and cities. We are not unmindful of the fact that this article does not apply to counties, but we think it may be properly considered in seeking a proper construction of the other sections of the Constitution. As pointed out in *Carroll v. Town of York, supra* (109 S. C. 1, 95 S. E. 121), one of the purposes sought to be accomplished by

both Article VIII, Section 1, and Article III, Section 34, was 'to make uniform the statute law on like subjects.' We have heretofore endeavored to point out that rational differences exist in the various counties with reference to their fiscal affairs, but no good reason appears why the police power should be exercised by the corporate authorities of one county and not by the others, particularly when comparable in size and population. Our attention has been called to no condition peculiar to Charleston County calling for the exercise of the police power by its corporate authorities. There is nothing in the Act reasonably justifying this classification."

As to the requirement of reasonableness in classification under the police power, see also *Gasque v. Nates*, 191 S. C. 271 2 S. E. (2d) 36.

Sanders v. Greater Greenville Sewer District, 211 S. C. 141, 44 S. E. (2d) 185, upheld a special act providing a method whereby an area lying without the limits of Greater Greenville Sewer District might become incorporated into that district and become a part of one of its sub-districts. The constitutionality of the act was challenged under the Fourteenth Amendment of the Constitution of the United States, and under several provisions of the Constitution of this State relating to elections, debt limitations and taxation; but no issue under Article III, Section 34, Subdivision IX was raised. The case is of interest here, nevertheless. The act involved in the *Sanders case* required as a condition precedent to the annexation the consent of a majority of the freeholders of the area to be so annexed, evidenced by their signatures on a written petition, or of a majority of the qualified electors within said area in an election called for that purpose. The General Assembly thus recognized the propriety, to say the least, of giving to the freeholders or electors of the area the right to determine whether or not such area should be annexed. Such right is, as we have pointed out, given by the general law (Chapter 4 of Title 59 of the 1952 Code) to the landowners and qualified electors of any area in a county not included in any incorporated city or town. No reasonable basis for denying such right to

the landowners or the qualified electors in the area of Una Water District appears in the record before us.

In *Welling v. Clinton Newberry Natural Gas Authority*, 221 S. C. 417, 71 S. E. (2d) 7, it was contended that the act (XLVII Stat. at L. 1958) creating, for the benefit of the towns of Clinton and Newberry, the Clinton Newberry Natural Gas Authority for the purpose of construction, operating and maintaining a single transmission line extending from Newberry through Clinton and thence to the main transmission line of Transcontinental Gas Pipe Line Company, was special legislation violative of Article III, Section 34, because of Chapter 187 of the 1942 Code (see Code, 1952, Sections 59-151 through 59-415). The court, rejecting this contention, pointed out that the special act was required by the particular situation involved, as had been expressly recognized by the General Assembly at the time of its passage, and that the general act (Code, 1942, Section 9240; Code, 1952, Section 59-366) had contemplated that special situations might arise requiring such legislation. Apart from the fact that the general law with which we are concerned in the instant case was not involved in the *Welling case*, the factual situation in that case readily differentiates it from this.

City of Spartanburg v. Blalock, 223 S. C. 252, 75 S. E. (2d) 361, was a contest between the City Council of Spartanburg and the Commissioners of Public Works of that city as to whether the power of the commissioners to handle the fiscal affairs of the city waterworks system under the act of March 2, 1896 as amended (then Sections 7280, 7281, 7283, 7284 and 7293 of the 1942 Code), a general law, had been taken away from them and vested in the city council under the act of May 8, 1933, as amended (then Chapter 187 of the 1942 Code), also a general law, pursuant to which the city had issued bonds secured by revenue derived from the waterworks system. The court, having held that the power of the commissioners to control and manage the city waterworks system and determine its fiscal policies had not been abridged by the latter act, proceeded then to consider the contention that Section 7675-53(3) of the 1942 Code, which authorized the commissioners (upon whom had been devolved the duties and powers of the former Commission-

ers of the Spartanburg Metropolitan District) to borrow, for the use of the city waterworks system, unemployed funds in their hands belonging to the Metropolitan District and pledge net revenues of the city system as security for the loan, was special legislation of the sort prohibited by Article III, Section 34 of the Constitution. Rejecting this contention, the court cited *State ex rel. Milford v. Brock*, 66 S. C. 357, 44 S. E. 931; *Burriss v. Brock*, 95 S. C. 104, 79 S. E. 193; *Brownlee v. Brock*, 107 S. C. 230, 92 S. E. 477; and *Sullivan v. City Council of Charleston*, 133 S. C. 156, 130 S. E. 872, as exemplifying the principle that such special legislation with regard to local fiscal affairs does not violate the constitutional mandate where a general law cannot be made applicable to the particular situation.

In *Brown v. Moseley*, 222 S. C. 1, 71 S. E. (2d) 591, attack was made, under Article III, Section 34, Subdivision IX, upon an act passed in 1952 amending the general law relating to the time for holding elections for the office of sheriff, so as to provide that in Kershaw County such election should be held in 1954 and quadrennially thereafter. It appeared that under the general law the election for sheriff in Kershaw County had been held in 1904 and quadrennially thereafter through 1916; that after the 1916 election, for a four year term, a vacancy had occurred; that the appointee to fill the vacancy had given up the office in 1918, and thereupon a sheriff had been elected in 1918 for a four-year term; and that quadrennial elections for that office had been held ever since, reckoning from 1918, although no statute to that effect had been enacted until the act of 1952. The court, upholding the act against the contention that it violated the constitutional injunction against special legislation, declared that the facts of the case (Kershaw County having been off the general schedule since 1918) clearly indicated the propriety of the challenged act as a special provision in the general law. It is to be noted that the act in question made no radical change in the general lay pertaining to the office of sheriff; it merely changed the date from which the quadrennial elections should be reckoned.

Wagener v. Johnson, 223 S. C. 470, 76 S. E. (2d) 611, was concerned with an attack upon an act passed in 1953, empowering the Board of Township Commissioners of

Folly Island to construct a waterworks system for said township and to issue revenue bonds to defray the cost thereof. Pertinent to consideration of this decision is its background, which we shall review as briefly as possible:

In 1936, pursuant to an act of the General Assembly approved on June 1 of that year (XXXIX Stat. at L. 1694; see Code, 1952, Sections 14-1261 through 14-1283) establishing a township form of government for Folly Island, a Board of Township Commissioners had been elected; and such board had functioned thereafter pursuant to said act and subsequent amendments, being vested thereunder with powers similar to those devolved upon the town councils of incorporated towns of less than 1,000 inhabitants. In 1950 the general law relating to incorporation of such towns, which provided among other things that their corporate limits should extend no farther than one mile from the center of the town, was amended so as to exempt from this limitation any island the citizens of which might desire to incorporate it as a town. In 1951, following an election on the question of whether Folly Island should be incorporated as a town under the name of "Folly Beach", a certificate of incorporation had been issued by the Secretary of State. A contest then ensued (*Wagener v. Smith*, 221 S. C. 438, 71 S. E. (2d) 1) between the Board of Township Commissioners and the corporate authorities of the newly chartered Town of Folly Beach, the former contending that the town charter was invalid because the 1950 amendment, *supra*, violated Article VIII, Section 1 of the Constitution, and the latter asserting that the act establishing the township government of Folly Island was violative of Article VIII, Section 2 and was "special legislation of the sort prohibited by the Constitution." In that case the court held the 1950 amendment valid; declined to pass upon the validity of the act creating the township government, pending the result of a reference that had been ordered by the lower court to determine the number of electors residing and entitled to vote within the island at the time of the proposal to incorporate; and remanded the case for that purpose. Upon such remand it was found by the Master that a majority of said electors had not voted in favor of incorporation; and this finding was confirmed by a circuit decree, from which no

appeal was taken. The case of *Wagener v. Smith* thus ended adversely to the proponents of incorporation. Prior to the commencement of the unsuccessful proceedings to incorporate as a town, the Board of Township Commissioners had obtained from Reconstruction Finance Corporation a commitment to purchase sufficient revenue bonds to finance the construction of a waterworks system, which had been blocked by the litigation just mentioned. *Wagener v. Johnson, supra,* was then brought, as a sequel to *Wagener v. Smith,* to lay the ghost of that case then haunting the contemplated bond issue, by setting at rest the question that had been noted but left undecided with regard to the constitutionality of the act establishing the township government.

While the particular constitutional provisions invoked in *Wagener v. Johnson* against the proposed issuance of bonds are not mentioned either in the opinion of the court or in the decree of the lower court, examination of the transcript of record reveals that the only constitutional challege contained in the pleadings was set forth in paragraph 4 of the complaint, which read as follows:

> "4. That plaintiff is informed that the statutes establishing the Township of Folly Island, creating the Board of Township Commissioners, and vesting in said board the several functions enumerated in Code Sections 14-1261 to 14-1283, inclusive, are null and void for the reason that said statutes create a town or municipal corporation—notwithstanding that the same is designated by the nomenclature 'Township'—and are violative of the provisions of Sections 1 and 2 of Article VIII and Subdivisions II and IX of Section 34 of Article III, of the Constitution, which prohibit the organization of municipal corporations by special acts and do not permit the incorporation of a city or town without the consent of the majority of the electors residing and entitled by law to vote within the district proposed to be incorporated."

It is thus apparent that the issue with which we are presently concerned was not before the court in *Wagener v. Johnson,* and that the constitutional attack there was

founded in reality upon Subdivision II of Section 34 of Article III, which forbids a special law incorporating towns, the contention being that the statutes in controversy created not a township, but a town. It is to be noted that the court expressly refrained from adjudicating the question of whether or not the statute creating the township (Code, 1952, Sections 14-1261 through 14-1283) was constitutional, resting its approval of the proposed bond issue upon the theory that this statute, together with the 1953 act (XLVIII Stat. at L. 781) empowering the Board of Township Commissioners to construct a waterworks system, should be construed as creating of the area a special district for waterworks purposes. In this connection it is to be observed:

1. That the general law relating to the establishment of water and sewer districts (Act of March 2, 1934, *supra;* Code, 1952, Title 59, Chapter 4) was in effect at the time of the passage in 1936 of the act creating the township government of Folly Island;

2. That the 1936 act (XXXIX Stat. at L. 1694) gave to the electors of the area in question the right, by their vote, to determine whether or not the "township" should be created and governed by a Board of Commissioners;

3. That the 1953 act in effect amended the 1936 act by giving to the already existing governing body the power to construct a waterworks system;

4. That the acts of 1936 and 1953, construed together as a "special district" act, made no radical departure from the essential principles of the general "water and sewer district" law; and

5. That the decision in *Wagener v. Johnson* thus accords with that in *City of Spartanburg v. Blalock, supra,* and the others before referred to, upholding, as "special provisions in general laws" (Const. Art. III, Sec. 34, Subd. X) local legislation that does not radically depart from the essential principles of existing general law on the subject.

The statement in the circuit decree quoted in the opinion, to the effect that legislation creating special purpose districts had been so often upheld that detailed discussion of the issue was unnecessary, is not to be taken as implying that such legislation is immune from constitutional restraint.

The very purpose of Article III, Section 34 was to compel, so far as might be practicable, uniformity of statute law on like subjects. *Carroll v. Town of York,* 109 S. C. 1, 95 S. E. 121, *Owens v. Smith,* 216 S. C. 382, 58 S. E. (2d) 332, and thus to remedy "the great and growing evil of special and local legislation", *State v. Hammond,* 66 S. C. 219, 44 S. E. 797. In the light of that purpose, the following principles are fairly deducible from consideration of the many decisions of this court under Subdivisions IX and X of that Section:

1. In the absence of a general law on the subject, a special law affecting a particular locality alone will not be within the prohibition of Subdivision IX if it may reasonably be concluded that a general law cannot be made applicable to the local situation;

2. If it may reasonably be concluded that existing general law on the subject cannot be made applicable to the local situation, a special law for the particular locality will not be within the prohibition of Subdivision IX; and

3. If there be a general law on the subject that can be made applicable to the local situation, but local conditions afford rational basis for enactment of a special law affecting that locality alone, such special law, if it does not radically depart from the essential principles of the general law, will be upheld, under Subdivision X, as a special provision in such general law.

But where no reasonable basis appears justifying the conclusion that a general law cannot be made applicable, the clear mandate of Subdivision IX requires that the special act be declared invalid. Nor can a special act that radically departs from the essential principles of applicable general law be spared such fate under Subdivision X on the theory that it is a "special provision" in such law. *Cf. Town of Forest Acres v. Town of Forest Lake, supra.* Subdivisions IX and X of Article III, Section 34 must be construed together, and not in such fashion that the provisions of either will be nullified by those of the other. *State ex rel. Schroder v. Burns, supra.*

I am unable to agree with the suggestion that the act *sub judice* may be sustained perforce Article VII, Section 11 of the Constitution, whereby the General Assembly "may

provide such system of township government as it shall think proper in any and all the counties, and may make special provision for municipal government * * *". The holding in *Carolina Grocery Company v. Burnet, supra,* that the term "municipal" as used in Article VII, Section 11, included counties as well as incorporated cities, towns and villages, was based upon the fact that Article VII is entitled "Counties and County Government". But assuming the applicability of Article VII, Section 11, to the case in hand—a question that we need not and do not decide—the provisions of that Section must be construed in connection with those of Article III, Section 34, Subdivision IX. *Cf. Carolina Grocery Company v. Burnet, supra.* Special legislation violative of the latter is not authorized by the former. *Owens v. Smith, supra. Cf.* also *Thomas v. Macklen,* 186 S. C. 290, 195 S. E. 539, and *Town of Forest Acres v. Town of Forest Lake, supra.*

> "The legislature may classify, for the purpose of legislation, if some intrinsic reason exists why the law should operate on some and not upon all, or should affect some differently from others; but this classification must be based upon differences which are either defined by the Constitution or are natural or intrinsic, and which suggest a reason that may rationally be held to justify the diversity in the legislation. It must not be arbitrary, for the mere purpose of classification. The class must be characterized by some substantial qualities or attributes which render such legislation necessary or appropriate for the individuals of the class". *Sirrine v. State,* 132 S. C. 241, 128 S. E. 172.

To the same effect are *Sansing v. Cherokee County Tourist Camp Board,* 195 S. C. 7, 10 S. E. (2d) 157; *Gillespie v. Pickens County,* 197 S. C. 217, 14 S. E. (2d) 900; *Shillito v. City of Spartanburg,* 214 S. C. 11, 51 S. E. (2d) 95, 5 A. L. R. (2d) 863; and *Fordham v. Fordham,* 223 S. C. 401, 76 S. E. (2d) 299.

Respondents point out that under the general law (Code, 1952, Title 59, Chapter 4) the commissioners of water and sewer districts are given no powers with regard to the collection and disposal of garbage. But that fact is

of no consequence here; such power may be granted by way of amendment of the code provisions.

There is no merit in respondents' suggestion that Article III, Section 34, Subdivision IX does not apply to legislation relating to special purpose districts. The language of the constitutional mandate is simple and unambiguous; prohibiting enactment of special laws in all cases where a general law can be made aplicable. To read into it the suggested exemption would be to amend, not interpret, it.

Nor can the 1955 act be sustained as a special provision in the general law. To construe Article III, Section 34, Subdivision X as sanctioning a local act so radically and essentially different from the applicable general law is effectually to nullify the prohibition contained in Subdivision IX.

The leading opinion suggests that, so far as the record discloses, no effort has been made by the landowners and electors of the area to create a special purpose district under Chapter 4 of Title 59 of the 1952 Code, and that this non-action justified the General Assembly in asserting its inherent right to correct the unsanitary conditions prevailing within this territory. It is true that as to whether effort has or has not been made pursuant to Chapter 4 of Title 59 the record is silent. But nowhere in the 1955 act is such non-action recited or suggested in justification of its enactment. Moreover, assuming that the landowners and electors of the area have made no effort in that direction or, having tried, have failed in such effort, it would by no means follow that either event would justify the enactment of the special law now before us. By what process of reasoning can it be argued that failure of the landowners and electors to act shall warrant their being penalized by not being allowed to elect their commissioners or to be heard concerning the water rates and the charges for the use of sewage facilities? Nor does it seem to me that the pendency of proceedings to create of the area a subdistrict of Spartanburg Metropolitan District under the provisions of the 1929 act could justify the passage of such an act as is here involved. Certainly the act before us contains no such recital. Further, it seems to me that by the enactment of Chapter 4 of Title 59 the General Assembly intended to leave it to the landowners and electors of the area con-

cerned to say by their vote whether or not such a district should be created. And if, in the opinion of the General Assembly, it is desirable to compel the establishment of public water and sewage facilities in areas in which the inhabitants have failed or refused to act under Chapter 4 of Title 59, why cannot a general law applicable to such case be enacted?

I cannot escape the conclusion that the act of May 19, 1955, is special legislation within the prohibition of Article III, Section 34, Subdivision IX. The General Assembly, by enacting Chapter 4 of Title 59, has declared in effect that a general law can be made applicable to the creation of water and sewer districts in any community not incorporated as a town or city. I find in the record nothing that would afford reasonable basis for holding that conditions in the Una Water District area require special legislation such as is here involved. The applicability of the constitutional inhibition in such cases cannot be doubted. *Cf. Gillespie v. Blackwell*, 164 S. C. 115, 161 S. E. 869; *Salley v. McCoy*, 182 S. C. 249, 189 S. E. 196; *Webster v. Williams*, 183 S. C. 368, 191 S. E. 51, 111 A. L. R. 1348.

I am no less firmly convinced that the issue under the due process clauses should be resolved in favor of the appellants, although the limitation upon the power of the General Assembly imposed by these provisions is less susceptible of exact definition than that under Article III, Section 34.

Money raised by general taxation may constitutionally be applied to purposes from which the individual taxpayer may receive no benefit, or indeed, may suffer serious detriment; but assessments for public improvements laid upon particular property owners are ordinarily constitutional only if based upon benefits received or reasonably to be expected. *Nashville, C. & St. L. R. Co. v. Walters*, 294 U. S. 405, 55 S. Ct. 486, 79 L. Ed. 949. Such benefits need not be direct or immediate; they may be indirect, such as might reasonably be expected to accrue as the result of the general benefits to the surrounding territory. *Myles Salt Co. v. Board of Commissioners*, 239 U. S. 478, 36 S. Ct. 204, 60 L. Ed. 329. And it is well settled that a legislative finding that the public works will be of benefit to the prop-

erty owners concerned need not be expressed, but is to be implied from the particularity of the description, in the statute, of the district itself; and that such finding, express or implied, is entitled to great deference and is conclusive unless shown to be without reasonable foundation. *Chesebro v. Los Angeles County Flood Control District,* 306 U. S. 459, 59 S. Ct. 622, 83 L. Ed. 921. But, for the same reason that findings by the legislature that concern the limitation of its power under Article III, Section 34 are, and must be, subject to review by the courts, determination of the factual issue of whether or not there was reasonable basis for the finding that the property of the aggrieved taxpayer will be benefited by the proposed public works is ultimately a judicial matter where the due process clause is invoked.

The facts in the instant case have already been stated. It appears undisputed that the textile plants and mill villages of the appellants Mills Mill, Draper Corporation and Powell Knitting Company, which are in that portion of the Una Water District Area lying south of the main line of the Southern Railway, are adequately served by water systems installed by these appellants; that those systems are already connected with the Spartanburg waterworks system, from which they obtain their supply of water; that of the other residences in the southern half of the proposed district all but twenty-four are now adequately served by the Spartanburg waterworks system; that no problem of health or sanitation exists in this part of the district; that water supply and sewage disposal facilities are inadequate in only a small area (the Una and Johnson City communities) in the northern part of the district; and that the properties of the three appellants before mentioned, which have no need for the proposed "publicly operated water and sewer systems", have an assessed valuation, for tax purposes, of about one-third of the total assessment of all properties in the proposed district. If under the provisions of the act the commissioners should see fit to acquire the water or sewer systems of these appellants, the appellants would themselves pay, in taxes, one-third of the compensation due them in the transaction. If such systems should not be so acquired, appellants may effectually be deprived

of their value without compensation, for Subsection 6 of Section 3 of the act empowers the commissioners to "prescribe regulations requiring persons who shall be residents of the district to make use of any water or sewer system which the district shall place in operation".

I confess my inability to perceive, in this situation, any reasonable prospect of benefit to the appellants' properties. On the contrary, it seems obvious to me that inclusion, in the proposed district, of the area lying south of the Southern Railway main line was for the benefit not of that area, but of the two small communities north of the railroad, to which reference has been made. *Myles Salt Co. v. Board of Commissioners, supra,* was decided on the pleadings, and the act there involved was one creating a drainage district; but the following language of the opinion in that case is applicable here:

> "It is to be remembered that a drainage district has the special purpose of the improvement of particular property, and when it is so formed to include property which is not and cannot be benefited directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation. *Phillip Wagner v. Leser, supra* (239 U. S. 207, 36 S. Ct. 66, 60 L. Ed. 230). We are not dealing with motives alone, but as well with their resultant action; we are not dealing with disputable grounds of discretion or disputable degrees of benefit, but with an exercise of power determined by considerations not of the improvement of plaintiff's property, but solely of the improvement of the property of others—power, therefore, arbitrarily exerted, imposing a burden without a compensating advantage of any kind."

I would reverse the judgment of the circuit court.

G. DUNCAN BELLINGER, A. A. J., concurs.

ORDER OF COURT OF COMMON PLEAS FOR SPARTANBURG COUNTY

These cases were brought as two distinct causes of action. Since both of them were similar and both had as their common objective the invalidation of Act No. 582 of the Acts of the General Assembly of 1955, under which the Una Water District was created, they were tried together by agreement of the parties.

The plaintiffs sought restraining orders from this Court, based on verified complaints, to enjoin the defendants from selling the bonds as authorized by the Act. Restraining orders were issued under *Circuit Court Rule 56*, and *Epps v. Bryant*, 218 S. C. 359, 62 S. E. (2d) 832, against the defendants without bonds being posted by the plaintiffs; simultaneously with the issuance of restraining orders, this Court ordered the defendants to show cause why the temporary injunctions *pendente lite* should not issue. After the hearing on the return to the rule to show cause an order was passed granting the temporary injunction *pendente lite* against the defendants providing the plaintiffs by a specified time each posted a bond in the amount of $2,500.00, thus making the total bond amount to $10,000.00. The time expired for the posting of the bond without any bond having been posted, therefore the temporary injunction automatically ceased under the terms of the order. At this juncture, it may be appropriate to state that the question as to whether or not there is liability on the part of the plaintiffs by reason of their having obtained the restraining orders *ex parte*, and the temporary injunctions, similar to that liability which would exist if the bond had been actually provided as required by law in the issuance of temporary injunctions, has not been presented and that question is not now being passed on.

The parties stipulated most of the facts; in addition this Court heard considerable testimony.

This act No. 582 of the Acts of the General Assembly of 1955 is one of a series of similar acts, which have been enacted during the past several years. In fact, there have been many such acts enacted lately creating water districts such as this one in various sections of the State. All of

these acts appear to have similar provisions, and the act now under attack is practically identical with the 1955 Riverdale District Act No. 578, the Inman-Campobello District Act (as amended), and the 1955 Inman Mills District Act No. 577, all of which Districts are in the County of Spartanburg. It is interesting to note that none of these Acts have been attacked as being unconstitutional or otherwise, and the Inman-Campobello District has recently sold approximately a million dollars worth of bonds. The fact that these other Acts have not been assailed as being unconstitutional is not determinative of the issues involved here, however, it is of some interest especially in view of the fact that some bonding house has already loaned a million dollars without considering the constitutional issue sufficiently close to warrant a test case. Plaintiff's counsel correctly argue differences in the Acts, but such differences are not of controlling importance.

A perusal of the allegations in the complaints and the testimony elicted at the hearing indicates that the plaintiffs attack the validity of Act No. 582 of 1955 upon three grounds. These grounds are substantially the same grounds of contest as appear in most cases in which the action of the General Assembly, in creating special purpose districts, is challenged. They are: (1) The contention that the creation of the district and the taxation of the plaintiffs are arbitrary and constitute a deprivation of property without due process of law on the ground that there is no benefit to the plaintiffs, but only the burden of taxation; (2) the contention that the legislation here is special legislation where general legislation already exists: and (3) the contention that the title to the Act fails to disclose its subject-matter and is therefore violative of Section 17, Article III of the Constitution.

Each one of these contentions will be dealt with separately, however, at this point, consideration should be given to the legislative finding pursuant to which the Una Water District Act was passed. Briefly, the preamble to the Act states that the General Assembly has found that the area encompassed by the Una Water District has become so populated that it is necessary and desirable for

the health and welfare of the inhabitants thereof to be served by publicly operated water and sewer systems and the district should also be empowered to make provision for the collection and disposition of garbage for the District. It is elementary that this Court should give some weight to this finding of fact by the Legislature, and as to how much should be given is indicated in the case of *State Ex Rel. Edwards et al. v. Query et al.*, 207 S. C. 500, 37 S. E. (2d) 241, where the Court said:

> "There are many instances where the constitutionality of an act depends upon pertinent facts and in such a case it is presumed from the mere passage of the act that there was a finding of such facts as were necessary to authorize the enactment. However, by the better rule, such implied or express finding is subject to judicial review, and the Court may consider extrinsic evidence for this purpose, although the statute will not be held unconstitutional unless such (legislative) finding is clearly erroneous."

In weighing the evidence in this case, this Court finds that this legislative finding of fact (that it is necessary for the inhabitants from a health and welfare standpoint to have publicly operated water and sewer systems), has not been rebutted. Plaintiffs' case fails to carry the burden of proof on this point. The defendants on the other hand fortified their position by having two sanitation employees of the Spartanburg County Health Department testify that a health survey had been made in the area as late as 1954, at which time every fifth house in the area was checked. They found an undesirable health menace prevalent throughout and stated that the area had caused the Health Department more concern than any other in Spartanburg County. The testimony indicates that there are numerous surface privies in the area, sometimes accommodating several families. There are also some septic tanks. Surface privies were definitely contaminating the wells in the area, most of which were shallow. Living organisms and gasoline were found in the wells and three or more families sometimes used one well. Unquestionably there is a definite need

for water, sewer and garbage facilities in the area and this Court so finds.

Plaintiffs' contentions that the creation of the district and the taxation of the plaintiffs constitute a deprivation of property without due process of law on the ground that there is no benefit to the plaintiffs, but only the burden of taxation have no basis upon which to stand. Mr. R. B. Sims, plaintiffs' own witness, who is Superintendent of the Spartanburg Water Works, admitted that any area obtaining water and sewerage developed and grew industrially and otherwise. As was stated in the case of *Floyd v. Parker Water and Sewer Sub-District et al.*, 203 S. C. 276, 17 S. E. (2d) 223.

> "It is a matter of common observation and experience that property must necessarily be benefited and its value enhanced where fire protection is adequate and where garbage disposal is provided for, thus adding to the safety and health of a community."

A fortiori is this true where you not only have garbage but also water and sewerage. It will enhance the value of all property and tend to cause new industry to locate in the area and will result in the tax burden being spread over a larger number of taxpayers.

It is generally held that a Court may not inquire into the lack of benefit to a taxpayer when the General Assembly has, itself, created a special purpose district and defined its areas. It has been stated by the United States Supreme Court and quoted with approval by our Court in the case of *Sanders v. Greater Greenville Sewer District*, 211 S. C. 141, 44 S. E. (2d) 185, that the legislature may fix the basis of taxation and define that apportionment of burden, and that its action cannot be assailed under the 14th Amendment unless it is palpably arbitrary and a plain abuse. The plaintiffs on whom the burden of proof rests have made no such showing here. The basis of taxation is the same for everyone in the Una Water District. An earlier case in the United States Supreme Court of *Valley Farms Company v. Westchester County*, 43 S. Ct. 261, held that there was no arbitrary abuse of power and refused to enjoin the bond issue where a sewer system to be constructed by West-

chester County was so situated that the plaintiff could never utilize any part of it.

The use of special purpose districts has been quite prevalent in South Carolina. Road or bridge districts were upheld in the cases of *Briggs v. Greenville County*, 137 S. C. 288, 135 S. E. 153; *Evans v. Beattie*, 137 S. C. 496, 135 S. E. 538, and *Bagnall v. The Bridge District*, 131 S. C. 109, 126 S. E. 644. Sewer Districts have been upheld in the cases of *Rutledge v. Greater Greenville Sewer District*, 139 S. C. 188, 137 S. E. 597; *Alley v. Daniel*, 153 S. C. 217, 150 S. E. 691; *Sanders v. Greater Greenville Sewer District, supra.*

Water districts have been upheld in *Wagener v. Johnson*, 223 S. C. 470, 76 S. E. (2d) 611. Likewise, special purpose districts for fire protection and garbage disposal have been upheld. *Floyd v. Parker Water and Sewer Sub-District, supra.*

Any analysis of the districts involved in any of these cases makes it apparent that there was no equality of special benefit among the property holders of these Districts. Obviously, the contrary was true, particularly in an area as large as Greater Greenville Sewer District, or in road or bridge districts, and our Supreme Court has been willing to accept general and indirect benefits as being sufficient to justify special assessments.

The doctrine laid down in the case of *Floyd v. Parker Water and Sewer Sub-District et al., supra*, should be set forth here:

> "The application of arbitrary rules of constitutional construction should be resorted to with caution, especially when it would bring about results contrary to the declared public policy of the state and would hamper the legislature in adequately providing for the health, morals, safety and well-being of the people."

This Court must, therefore, find that the plaintiffs have failed to prove that the Act is invalid under the due process clauses of the State and Federal Constitutions.

The Court comes now to the contention that the legislation here is special legislation since general legislation

already exists. Contentions such as these were unsuccessfully made in *Powell v. Hargrove*, 136 S. C. 345, 134 S. E. 380, an act involving the creation of a high school district. *Arnette v. Ford*, 129 S. C. 526, 125 S. E. 138, an act involving consolidation of five common school districts into a high school district. In *Welling v. Clinton Newberry Natural Gas Authority*, 221 S. C. 417, 71 S. E. (2d) 7, it was said that Chapter 187 of the Code empowering all municipal corporations to construct and operate natural gas systems is a general law precluding a local act relating to said subject. Our Supreme Court held there was no merit in the contention and that the legislature was fully empowered to deal with the special situation presented.

> "The device used in the act under consideration is not new in South Carolina. We have sustained legislation creating, among others, an authority to construct and operate a hydro-electric project, *Clarke v. S. C. Public Service Authority*, 177 S. C. 427, 181 S. E. 481, and an authority to erect houses for families of low income, *Benjamin v. Housing Authority of Darlington County*, 198 S. C. 79, 15 S. E. (2d) 737. We have also upheld special districts created for the purpose of furnishing water and sewer facilities. *Rutledge v. Greater Greenville Sewer District*, 139 S. C. 188, 137 S. E. 597; *Floyd v. Parker Water and Sewer Sub-District*, 203 S. C. 276, 17 S. E. (2d) 223."

I do not agree that the act is special legislation as prohibited by the Constitution.

I now come to the contention that the title to the act fails to disclose its subject-matter and is therefore violative of Sec. 17, Art. III of the Constitution. The purpose of this section is to require that notice be given to the General Assembly and to the public of the general subject-matter of any act. It was not intended that the title should constitute an index to the contents of the act. *State ex rel. Coleman v. Lewis*, 181 S. C. 10, 186 S. E. 625. The title here is in no way misleading or deceptive. The title is as follows:

> "An act to create Una water district in Spartanburg County; To define its area; To establish a governing commission therefor; To prescribe the functions

and powers of the district and its commission; To make provision for borrowings by the district, including the issuance of not exceeding five hundred thousand dollars of general obligation bonds; To prescribe the terms and conditions under which Monies may be borrowed by the district; And to make provision for their payment."

It clearly shows that a special purpose district was to be created to which was to be committed several functions and it put all concerned on notice that they should read the act itself to ascertain the details. Nowhere in the title is there a statement of what the functions of the special purpose district are to be. It is merely said that Una Water District is to be created and immediately follows a statement noting that it is to have several functions. The fact that word "function" and the word "power" appear in the plural and not the singular indicates that the district is to have more than one function. To invalidate the statute for this reason would be to require the title to become an index. This section of the Constitution has been generally construed with great liberality. *Gasque v. Nates*, 191 S. C. 271, 2 S. E. (2d) 36. See also *Caldwell et al. v. McMillan et al.*, 224 S. C. 150, 77 S. E. (2d) 798.

It is the further finding of this Court that the area encompassed in the Una Water District Act, as a whole, is not being adequately served with water, sewerage and garbage.

Much concern was exhibited by the plaintiffs as to why the defendants had not obtained an engineering plan as to the construction, location and installation of the water and sewer lines in the district and the cost thereof. A perusal of the Act reveals that it does not require as a condition precedent to the issuance and sale of the bonds that an engineering plan be first formulated and approved. The bonds must be sold first in order to guarantee that the engineering plan can be paid for.

It is apparent that the plaintiffs in this case are among the largest, if not the largest, taxpayers in the district; they will of course pay property taxes correspondingly. It is contended by the plaintiffs that the burden of taxes falling

upon them will be confiscatorily excessive, depriving them of property without due process of law. It is obvious, of course, that they will pay substantially. However, the Court is of the opinion that the plaintiffs have not by the preponderance of the evidence, established that the payments will be in such proportion that the Court should intervene. It is a legislative matter and this Court concludes that the plaintiffs have not carried the burden of proof on this point.

The plaintiffs on several occasions attempted to have records and testimony in another case admitted into evidence in this case. This Court reserved its decision on several matters relative thereto, but now rules that those records and testimony are not competent in this case and are excluded. The case now being litigated is not an appeal in any sense of the word, but is a *de novo* proceeding attacking the constitutionality of an act of the Legislature.

In the trial of this case, this Court has been mindful of that rule of law that the plaintiffs have the burden of proving the act unconstitutional beyond a reasonable doubt. Cases are legion in this State to the effect that every act of the General Assembly is presumed to be constitutional, and such law is so well established that citation of authority is not necessary. The evidence has been weighed and all of the authorities have been studied. There is but one conclusion that this Court can reach and that is that the Una Water District Act is valid and constitutional, and

IT IS SO ORDERED.

IT IS THEREFORE ORDERED that the defendants may proceed to carry out their duties and comply with the terms of the Act, and that the plaintiffs pay the Court costs.

/s/ BRUCE LITTLEJOHN,
Judge of the Seventh Judicial Circuit.

March 7, 1956.

ACT NO. 582 OF THE ACTS OF THE GENERAL ASSEMBLY OF 1955; 49 STATUTES AT LARGE OF SOUTH CAROLINA

AN ACT to Create Una Water District in Spartanburg County; to Define its Area; to Establish a Governing Commission Therefor; to Prescribe the Functions and Powers of the District and its Commission; to make Provision for Borrowings by the District, Including the Issuance of Not Exceeding Five Hundred Thousand Dollars of General Obligation Bonds; to Prescribe the Terms and Conditions Under Which Monies May be Borrowed by the District; and to Make Provision for Their Payment.

Whereas, the General Assembly after due investigation has found that the area in Spartanburg County described below has become populated to an extent that makes it necessary and desirable for the health and welfare of the inhabitants thereof to be served by publicly operated water and sewer systems, and that in addition thereto the district hereby created should be empowered to make provision for the collection and disposition of garbage for the district; and

Whereas, as a consequence of its findings above recited, the General Assembly has determined to constitute the area as a special purpose district, to provide a governing body for the district, and to empower the governing body as hereinafter provided for. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

Section 1. Una Water District, creation of: There is hereby created and established in Spartanburg County a district to be known as "Una Water District," which district shall be a public corporation of perpetual succession, and shall have the functions prescribed by this act. The district shall include and be comprised of the following territory:

All that area in Spartanburg County beginning at the point described as the intersection of the road west of the County Tuberculosis Hospital and the Gowansville Road; thence southerly in a straight line approximately 4,250 feet to the center of another county road

which is also the property line of the Mayfair Mill, the southern portion of this boundary line being 200 feet west of and parallel with State Highway No. 295; thence with the Mayfair Mill property line in a general southeasterly direction in five courses to the intersection of the mill property with the southern right-of-way line of the Southern Railway Co.; thence due south to the intersection with another property line of the Mayfair Mill; thence with the property line easterly to the center of Two Mile Creek; thence with the center of Two Mile Creek southerly to its intersection with Fairforest Creek; thence southeasterly with the center of Fairforest Creek; thence southeasterly with the center of Fairforest Creek, following its meanders, to the abandoned Greenville Highway at the old Adair Mill Place; thence easterly with the center of the old highway and Wofford Street extension to the corporate limit of the City of Spartanburg; then northeasterly with said city limit to the intersection of the northwestern corporate limit of the City of Spartanburg and the center line of the Southern Railway right-of-way, between Howard Gap Road and Hayne St.; thence running along the center of said right-of-way northwesterly to Hayne Junction: thence along the center of the right-of-way of the Southern Railway's Asheville line northwesterly to the center of the underpass at State Highway No. 295; thence along the center of said highway southwesterly to the southwestern edge of the Southern Railway right-of-way; thence northwesterly along said right-of-way to the center of the county road west of the County Tuberculosis Hospital; thence southwesterly along the center of said road to the point of beginning.

As soon as practicable following the enactment of this act a plat or drawing shall be made of the district, and copies thereof duly filed in the Register of Mesne Conveyance Office for Spartanburg County and in the office of the auditor and treasurer of the county.

Operation and management:

Section 2. The district shall be operated and managed by a commission to be known as "Una Water District Commission." The commission shall consist of three resident electors of the district, who shall be appointed by the Governor, upon the recommendation of a majority of the Legislative Delegation of Spartanburg County. The original appointments shall be for a term of two years of one appointee, for four years for the second appointee and for six years for the third appointee, and in all cases those persons holding office shall continue to hold office until their successors shall have been appointed and have qualified. The initial terms of office shall begin as of the effective date of this act, notwithstanding that this may effect a lessening of the duration of the terms of office of the initial members of the commission. Upon the termination of office of any commissioner, a successor shall be appointed by the Governor, upon the recommendation of a majority of the Legislative Delegation of Spartanburg County for a term of six years. Any vacancy occurring in the office of commissioner by reason of death, resignation or otherwise, shall be filled for the remainder of the unexpired term by appointment of the Governor, upon the recommendation of a majority of the Legislative Delegation of Spartanburg County.

Powers of commission—election on bond issue:

Section 3. There is hereby committed to the district the functions of purchasing, acquiring, constructing, operating, maintaining, improving and extending a water distribution system, a sewer system and a system for the collection and disposition of garbage. To that end, the commission shall be empowered as provided below:

1. Have perpetual succession.

2. Sue and be sued.

3. Adopt, use and alter a corporate seal.

4. Make bylaws for the management and regulation of its affairs, and to define a quorum for its meetings.

5. Deposit monies derived from revenue producing facilities, and to withdraw the same for the purpose of operating and maintaining such facilities.

6. Prescribe regulations reqquiring persons who shall be residents of the district to make use of any water or sewer system which the district shall place in operation. Such regulations shall, however, become effective only after they have been adopted by resolution of the commission and notice of the adoption of such regulations shall be published at least once for three successive weeks in a newspaper published in Spartanburg County, and having general circulation in the district. The notice shall specify in brief the scope of the regulations, and shall state the date on which the same shall become effective. Prior to the adoption of the aforesaid resolution, the commission shall give public notice of the meeting which is to be held to consider their adoption, and the notice shall appear in a newspaper published in Spartanburg County, and having general circulation in the district, not less than seven days prior to the occasion fixed for the holding of such meeting. The provisions of this paragraph, prescribing conditions upon the effectiveness of regulations adopted to require compulsory use of water and sewer facilities, shall not be deemed to impose conditions upon the making or adoption of any other type of regulation authorized by this act.

7. Acquire, purchase, hold, use, lease, mortgage, sell, transfer and dispose of any property, real, personal or mixed, or any interest therein.

8. Build, construct, purchase, acquire, operate and maintain water lines and water mains throughout the district, and all apparatus necessary for the proper functioning of the same, and from time to time to enlarge and extend the same.

9. Build, construct, purchase, acquire, operate and maintain a system for the collection and disposal of sewage, including the construction of sewer mains and sewer lines, and from time to time enlarge and extend the same.

10. Establish, operate and maintain a system for the collection and disposal of garbage.

11. Purchase, acquire and continue the use and operation of any and all of the water lines and sewer lines that may presently exist in the area.

12. Purchase, or otherwise acquire, a supply of water for its water distribution system, and to that end to purchase, acquire, build, construct, maintain and operate water tanks, reservoirs, pumps and such other appartus as may be necessary to obtain and distribute water, and to enter into contracts for the purchase of water at wholesale.

13. Distribute and sell water on such terms and rates as it shall from time to time approve. To that end, the commission shall be empowered to place into effect and to revise, whenever it so wishes or may be so required, a schedule of rates and charges for water furnished by its water distribution system.

14. Place into effect and to revise, whenever it so wishes or may be required, a schedule of rates and charges for the use made of its sewage disposal system.

15. Make use of county and State highway rights-of-way in which to lay pipes and lines in such manner and under such conditions as the appropriate officials in charge of such rights-of-way shall approve.

16. Exercise the power of eminent domain for any corporate function. The power of eminent domain may be exercised through any procedure prescribed by Sections 25-101 through 25-140 and Sections 33-121 through 33-148, Code of Laws of South Carolina, 1952.

17. Appoint officers, agents, employees and servants, to prescribe the duties of such, to fix their compensation, and to determine if and to what extent they shall be bonded for the faithful performance of their duties.

18. Make contracts for construction, engineering and other services, with or without competitive bidding.

19. Issue, under the conditions prescribed by Item 21 of this section, general obligation bonds of the district, in the amount of not exceeding five hundred thousand dollars.

20. In addition to the powers given by Item 19 of this section, the commission may, on behalf of the district, borrow money and make and issue negotiable bonds, notes and other evidences of indebtedness payable solely from all or any part of the revenues derived from the operation of any revenue producing facility. The sums borrowed may be

those needed to pay all costs incident to the purchase, acquisition, construction and establishment of its water system, its sewer system, or both, or such sum as may be needed to pay the cost of any extension, addition and improvement to the water system, the sewer system, or both. If the method of financing authorized by this item is used, neither the faith and credit of the State of South Carolina, nor of Spartanburg County, nor of the district shall be pledged for the payment of the principal and interest of the obligations, and there shall be on the face of each obligation a statement, plainly worded, to that effect. Neither the members of the commission nor any person signing the obligations shall be personally liable thereon. So that a convenient procedure for borrowing money pursuant to this paragraph may be prescribed, the district shall be fully empowered to avail itself of all powers granted by Sections 59-361 through 59-415 and Sections 59-651 through 59-682, Code of Laws of South Carolina, 1952. In exercising the powers conferred upon the district by such code provisions, the district may make all pledges and covenants authorized by any provision thereof, and may confer upon the holders of its securities all rights and liens authorized by such code provisions. Specifically, and notwithstanding contrary provisions in any such code provisions, the district may:

(a) Provide that such bonds, notes or other evidences of indebtedness be payable, both as to principal and interest, from the net revenues derived from the operation of any revenue producing facility, as such net revenues may be defined by the commission.

(b) Covenant and agree that upon it being adjudged in default as to the payment of any installment of principal or interest upon any obligation issued by it or in default as to the performance of any covenant or undertaking made by it, that in such event the principal of all obligations of such issue may be declared forthwith due and payable, notwithstanding that any of them may not have then matured.

(c) Confer upon a corporate trustee the power to make disposition of the proceeds from all borrowings and also of all revenues derived from the operation of the revenue producing facility, whose revenues are pledged for the pay-

ment of such obligations, in accordance with and in the order of priority prescribed by the resolutions adopted by the commission as an incident to the issuance of any notes, bonds or other evidences of indebtedness.

(d) Dispose of its obligations at public or private sale, and upon such terms and conditions as it shall approve.

(e) Make such provision for the redemption of any obligations issued by it prior to their stated maturity, with or without premium, and on such terms and conditions as the commission shall approve.

(f) Covenant and agree that any cushion fund established to further secure the payment of the principal and interest of any obligations shall be in a fixed amount.

(g) Covenant and agree that no free service will be furnished to any person, firm, corporation, municipal corporation, or any subdivision or division of the State.

(h) Prescribe the procedure, if any, by which the terms of the contract with the holders of its obligations may be amended, the number of obligations whose holders must consent thereto, and the manner in which such consent shall be given.

(i) Prescribe the events of default and the terms and conditions upon which all or any obligations shall become or may be declared due before maturity and the terms and conditions upon which such declaration and its consequences may be waived.

21. The commission, on behalf of the district, shall be empowered to issue not exceeding five hundred thousand dollars of general obligation bonds of the district, whose proceeds shall be used to defray the cost of purchasing, acquiring, constructing and establishing a water system of a sewer system, or both, in the district. For the purpose of this act, the term "purchase, acquire, construct and establish" shall embrace the cost of direct purchase or acquisition of existing water and sewer lines and any existing facilities and equipment presently in the district, the cost of direct construction, the cost of all land, property, rights, easements and construction, the cost of all land, property, rights, easements and franchises acquired, which are deemed necessary for such water or sewer system, or both,

the cost of all machinery and equipment needed therefor, payments to contractors, laborers or others for work done or material furnished, financing charges, interest prior to and during construction and for six months after completion of construction, cost of engineering services, legal services, legal expenses, plans, specifications surveys administrative expenses, and such other expenses as may be necessary or incident to the construction of the water or sewer system, or both, and the placing of the same in operation. General obligation bonds shall be issued only in the event the election required by this item shall result favorably. All or any general obligation bonds issued pursuant to this item may he additionally secured by a pledge of the net revenues to be derived from the operation of any revenue producing facility operated and maintained by the district. The words "net revenues" as used in this item shall mean that sum remaining from the aggregate of all monies realized by the district from rates and charges imposed and collected after paying the cost of operation and maintenance of the facility, whose revenues shall be pledged. If, pursuant to this item, general obligation bonds are issued:

(a) They shall be issued as a single issue or from time to time as several separate issues. They shall bear such date or dates as the commission shall determine and the bonds of any issue shall mature in such equal or unequal installments as may be determined by the commission. They shall be made payable at such place or places as the commission shall prescribe, and they shall bear interest at such rate or rates, and shall be payable in such manner as the commission may determine. The bonds may be issued with the privilege to the holder of having them registered as to principal on the books of the Treasurer of Spartanburg County, and the principal thus made payable to the registered holder, unless the last registered transfer shall have been to bearer, upon such conditions as the commission may prescribe. Any bond issued pursuant to this item may be made subject to redemption prior to its stated maturity, on such terms and conditions, and with such redemption premium as the commission shall prescribe.

(b) They shall be sold at not less than par and accrued interest to the date of their respective deliveries, at public sale, and at least ten days prior to any sale, notice, announcing the intention to receive bids for the sale of such bonds shall be published in a newspaper of general circulation in the State of South Carolina. In offering the bonds for sale, the commission shall reserve the right to reject any and all bids, and if all bids shall be rejected, the commission may negotiate privately for the disposition of such bonds.

(c) Such bonds and all interest to become due thereon shall have the tax exempt status prescribed by Act No. 730 of the Acts of South Carolina, 1952.

(d) Such bonds shall be executed in the name of Una Water District by the chairman and the secretary of the Una Water District Commission, under the seal of the district. The coupons attached to such bonds may be authenticated by the facsimile signatures of the chairman and the secretary of the commission who are in office on the date of such bonds. The delivery of any bonds so executed and authenticated shall be valid, notwithstanding any changes in officers or seal occurring after such execution of authentication.

(e) There shall be irrevocably pledged for the payment of the bonds and interest as they mature, the full faith, credit and resources of the district, and the Auditor and Treasurer of Spartanburg County are hereby authorized and directed to levy and collect annually a tax upon all taxable property within the district sufficient to pay the bonds and interest as they respectively mature, and to create such sinking fund as may be necessary for the redemption of the bonds and interest at respective maturities. The bonds may be additionally secured by a pledge of the net revenues which the district may derive from the operation of any revenue producing facility. In such event, such net revenues as shall be available, shall be delivered to the Treasurer of Spartanburg County, and he shall set them apart in a special fund and apply them solely to the payment of the principal and interest of the bonds, so additionally secured by a pledge of the net revenues, so long

as any principal or interest of the bonds remain outstanding. The annual ad valorem tax herein directed to be levied may be reduced in each year by the amount of net revenues, as aforesaid, actually in the hands of the Treasurer of Spartanburg County at the time the tax for such year is required to be levied, and the tax may be entirely suspended for any year in case such monies on hand, applicable as aforesaid, are sufficient to pay both principal and interest then due or falling due in such year and remaining unpaid.

(f) The pledge of net revenues authorized by subparagraph (e) of this Item 21 need not, in the discretion of the commission, be exclusive, and the commission may reserve the right to issue further bonds payable in whole or in part from such net revenues on a parity with the bonds authorized by this paragraph under such conditions as the commission may prescribe.

(g) The proceeds derived from the sale of such bonds shall be deposited with the Treasurer of Spartanburg County in a separate and special fund, and shall be expended upon the warrants or orders of the commission for the purposes specified herein, and no others, except that any premium received shall be deposited with the Treasurer of Spartanburg County and applied by him to the first installment of principal becoming due on the bonds, and any accrued interest received shall be applied by the Treasurer of Spartanburg County to the first installment of interest becoming due on the bonds. Neither the purchasers of the bonds, nor any subsequent holders thereof, shall be responsible for the proper application of the proceeds of sale.

22. Make provision for the holding of a special election in the district on a date to be fixed by the commission, at which time there shall be submitted to the qualified electors of the district the question of issuing bonds of the district for the purposes authorized by Item 21 of this section. The election shall be conducted by the Commissioners of Election for Spartanburg County, who shall give notice of the election by publication once each week, for three successive weeks prior thereto, in one or more newspapers with general circulation in the district, stating the question to be submitted at the election, and specifying the amount in

dollars of the bonds proposed to be issued. The election shall be conducted at the several voting precincts in the district, as the same are now established by law. The question submitted shall show on its face the primary purpose or purposes for which the proceeds of the bond issue are to be expended, and with the blank space therein appropriately completed. The question shall be submitted in substantially the following form:

"Shall the Una Water District issue bonds in a sum not exceeding five hundred thousand dollars, the proceeds of which shall be used to construct and establish ..... in said district?

Yes
No"

The ballot shall contain suitable instructions, advising the voter that if he favors the issuance of bonds, he shall erase or strike through the word "No," and that if he is opposed to the issuance of bonds, he shall erase or strike through the word "Yes." The managers of election at each precinct shall count the ballots and forthwith return the results of the election, together with the original ballots and tally sheets, to the Commissioners of Election of Spartanburg County who shall declare the result of the election. If the commissioners determine that a majority of those voting in the election voted in favor of the issuance of bonds, the bonds, or any part thereof, may be issued as provided in Item 21 of this section, but if the commissioners determine that a majority of the ballots cast in the election be against the issuance of bonds, then no bonds shall be issued. Except as herein provided, the election shall be conducted in accordance with the provisions of the South Carolina Election Law.

23. Do all other acts and things necessary or convenient to carry out any function or power committed or granted to the district.

Revenues, disposition of:

Section 4. All revenues derived by the commission from the operation of any revenue producing facility which may not be required to discharge covenants made by it, in issuing bonds, notes or other obligations authorized by this

act, shall be disposed of by the commission, from time to time, for purposes germane to the functions of the district.

Rates:

Section 5. The rates charged for services furnished by any revenue producing facility of the district as constructed, improved, enlarged or extended shall not be subject to supervision or regulation of any State bureau, board, commission or other like instrumentality or agency thereof.

Property and income exempt from certain taxes:

Section 6. The property and income of the district shall be exempt from all taxes levied by the State, county or any municipality, division, subdivision or agency thereof, direct or indirect.

Powers of commission not diminished:

Section 7. So long as the district shall be indebted to any person, firm or corporation on any bonds, notes or other obligations, issued pursuant to the authority of this act, the provisions of this act, and the powers granted to the district and the commission shall not be in any way diminished or restricted, and this provision of this act shall be deemed a part of the contract between the district and the holders of such obligations.

Unlawful to impair any facility of district—penalty:

Section 8. It shall be unlawful for any person to willfully injure or destroy, or in any manner hurt, damage, tamper with or impair any facility of the district, or any part of the same, or any apparatus or equipment incident thereto or used or useful in the operation of such facility, or to obtain water from its water distribution system except in accordance with the regulations promulgated by the commission. Any person so offending shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars nor more than one hundred dollars, or shall be imprisoned for not more than sixty days at the discretion of the court, and shall be further liable to pay all damages suffered by the district.

Saving clause:

Section 9. If any part of this act shall be held unconstitutional, such unconstitutionality shall not affect the remainder of this act.

Repeal:

Section 10. All acts or parts of acts inconsistent herewith are hereby repealed.

Time effective:

Section 11. This act shall take effect upon its approval by the Governor.

Approved the 19th day of May, 1955.

CODE OF LAWS OF SOUTH CAROLINA, 1952

DISTRICTS FOR CERTAIN PUBLIC WORKS

§ 59-601. Authority to establish.

In order to protect the public health, electric lighting districts, water supply districts, fire protection districts and sewer districts may be established as herein provided for the purpose of supplying lights and/or water and/or providing fire protection, a sewerage collection system and/or a sewerage treatment plant to a portion of any county in this State which is not included in any incorporated city or town.

1942 Code § 8555-131; 1934 (38) 1292.

§ 59-602. Petition for formation of district.

Before any such district is formed there shall be filed with the clerk of the court of the county in which such district is proposed to be located a written petition signed by a majority of the resident landowners in the proposed district or by the owners of more than half the land and acreage which will be affected by or assessed for the epense of the proposed improvements, as shown by the tax assessment rolls. The petition shall be accompanied by a plant showing the limits of the proposed district. When such proposed district is situated in two or more counties such petition shall be filed with the clerk of the court of each county wherein the district is to be located.

1942 Code § 8555-132; 1934 (38) 1292.

§ 59-603. Call of election.

When the petition is approved by the clerk of the court in which the proposed district is located, the clerk of the court shall call an election of the qualified voters of the district to vote upon the establishment of the district and of the electric light, water supply, fire protection and/or sewerage plant.

1942 Code § 8555-132; 1934 (38) 1292.

§ 59-604. Qualifications of electors.

At such election only such electors as return real and personal property for taxation within the district and who exhibit their tax receipts and registration certificates as required in the general election shall be allowed to vote.

1942 Code § 8555-133; 1934 (38) 1292.

§ 59-605. Place, managers and notice of election and declaration of result.

The clerk of the court shall select some place within the proposed district for the holding of such election and shall appoint the managers thereof and declare the result. He shall give notice of the time and place thereof for at least two weeks in some newspaper published within the county and by posting notice thereof in at least three public places within the proposed district for such length of time unless there be no newspaper published within the county, in which event the posting of the notices shall suffice.

1942 Code § 8555-133; 1934 (38) 1292.

§ 59-606. Questions submitted; election of commissioners.

At such election the qualified voters shall vote "Yes" or "No" on the establishment of such electric light, water supply, fire protection and/or sewerage district and of the electric light, water supply, fire protection and/or sewerage plant and at the same election they shall vote on the election of three commissioners of the district who shall hold office for a period of six years and until their successors are elected and qualified, the members of the first commission, however, to have terms of office of two, four and six years. Thereafter a commissioner shall be elected at each State biennial election.

1942 Code § 8555-133; 1934 (38) 1292.

§ 59-607. Organization of commission; vacancies.

As soon as practicable after the election the commissioners shall meet and organize as the board of electric light, water supply, fire and/or sewerage commissioners, as the case may be, for such district. They shall draw by lot the commissioners who shall hold the two, four and six year terms respectively. At the organization meeting they shall elect one of their number as chairman. In the event of any vacancy on the commission the remaining members of the commission shall elect a commissioner to fill the unexpired term.

1942 Code § 8555-133; 1934 (38) 1292.

§ 59-608. Minutes and secretary; compensation.

The commissioners shall keep a record of their deliberations and for this purpose shall appoint a secretary who shall receive such remuneration as the commissioners may determine. The commissioners shall serve without emolument.

1942 Code § 8555-133; 1934 (38) 1292.

§ 59-609. General powers and duties of commissioners.

The boards of commissioners of such districts shall be bodies politic and shall exercise and enjoy all the rights and privileges of such. They may purchase and build or contract for building such electric light, water supply, fire protection and sewerage systems, may lease, own, hold and acquire all necessary equipment and property for such purpose and operate it and may contract with existing light and water companies and municipalities for light, water and fire protection or contract and connect with existing sewerage systems of municipalities or other districts. They may supply and furnish lights and/or water and/or provide for fire protection and/or sewerage disposal to citizens of such districts and may require an exact payment of such rates, tolls, rentals and charges as they may establish for the use of lights, water, fire protection and the sewerage plant.

1942 Code § 8555-134; 1934 (38) 1292.

§ 59-610. Plat of district.

The commission shall cause a copy of the plat showing the limits of the proposed district to be filed in the office of the auditor of the county in which the district is located.

1942 Code § 8555-133; 1934 (38) 1292.

§ 59-611. Power of condemnation.

Such districts being created and established for the purpose of providing better sanitary conditions for the people thereof, the boards of commissioners of such districts shall have power of condemnation for such purpose in the same manner and way as provided for condemnation by railroad corporations in article 8 of chapter 10 of Title 58.

1942 Code § 8555-134; 1934 (38) 1292.

§ 59-612. Establishment of rates, etc.

The board of commissioners of any such electric light, water supply, fire protection and/or sewerage district shall establish and maintain just and equitable rates, rentals or charges for the use of and the service rendered by such works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the electric light system, water supply system, fire protection system and/or sewerage system or that in any way is served by such works and may change or adjust such rates or charges from time to time.

1942 Code § 8555-137; 1934 (38) 1292.

§ 59-613. Hearing prior to such establishment.

No such rates or charges shall be established until after a public hearing at which all the users of the works and the owners of property served or to be served thereby shall have an apportunity to be heard concerning the proposed rates. Notice of such hearing, setting forth the proposed schedule of such rates, shall be given by one publication in a newspaper published in the county wherein the district is located at least ten days before the date fixed in such notice for the hearing. After such hearing the rate shall be passed upon by the board of commissioners and put into effect.

1942 Code § 8555-137; 1934 (38) 1292.

§ 59-614. Schedule to be kept on file.

A copy of the schedule of such rates so established shall be kept on file in the office of the board of commissioners.

1942 Code § 8555-137; 1934 (38) 1292.

§ 59-615. Lien for rates; suits therefor.

All such rates or charges if not paid when due shall constitute a lien upon the premises served by such works. If any service rate or charge so established shall not be paid within thirty days after it is due, the amount thereof, together with a penalty of ten per cent and a reasonable attorney's fee, may be recovered by the board in a civil action in the name of the district and in connection with such action such lien may be foreclosed against such lot, parcel of land or building, in accordance with the laws relating thereto.

1942 Code § 8555-137; 1934 (38) 1292.

§ 59-616. Issue of bonds for construction or acquisition.

To meet the costs of construction or acquisition of the lighting system, waterworks system, fire protection system and/or sewerage system, the commissioners of any district may issue and sell serial coupon bonds for and in behalf of the township within which the district is located.

1942 Code § 8555-135; 1934 (38) 1292.

§ 59-617. Terms and amount of bonds.

Such bonds shall be issued serially and the last of them shall mature not more than twenty years from the date of issue, to bear a rate of interest not to exceed six per cent per annum payable semiannually at some place in the State or the office of some banking or trust company in the city of New York to be selected by the commissioners. The amount of the bonds to be issued shall be determined by the commissioners of the districts.

1942 Code § 8555-135; 1934 (38) 1292.

§ 59-618. Election prerequisite to bond issue.

Before any such bonds shall be issued the question of issuing them shall be first submitted to the qualified voters of the electric light, water supply, fire protection and/or sewerage district at an election to determine whether such

bonds shall be issued or not, to be held upon the written petition or request of at least one third of the resident electors and a like proportion of the freeholders of the age of twenty-one years. Upon the receipt of such petition, the board of commissioners of the electric light, water supply, fire protection and/or sewerage district, as the case may be, shall order an election to be held at such place in the district as may be designated by the board of commissioners on the question as to whether such bonds shall be issued or not. In such election only qualified voters residing in such district shall be allowed to vote. The board of commissioners shall give notice of such election for at least ten days in a newspaper published in the county or by posting such notice in three public places in the district. It shall designate the time and place and appoint the managers of the election and receive the returns of the managers and declare the result. The ballots cast must have written or printed on them "for bonds" or "against bonds".

1942 Code § 8555-135; 1934 (38) 1292.

§ 59-619. Issue and sale of bonds; use of proceeds.

If a majority of the votes cast at such election shall be for the issuing of bonds, such bonds shall be issued and sold by the board of commissioners at not less than par and accrued interest and the proceeds shall be used by the board of commissioners for the purpose of construction and equipment in behalf of the district of the electric light, water supply, fire protection or sewerage system, as the case may be.

1942 Code § 8555-135; 1934 (38) 1292.

§ 59-620. Signature of bonds.

All bonds issued under and in pursuance of the provisions of this chapter shall be signed by the chairman of the board of commissioners of the electric light, water supply, fire protection and/or sewerage district and by the county supervisor of the county in which such district is situated. The names on the coupons attached to the bonds may be lithographed, which shall constitute a proper and sufficient signing thereof.

1942 Code § 8555-135; 1934 (38) 1292.

§ 59-621. Bonds tax free.

All such bonds shall be exempt from State, county and municipal taxation.

1942 Code § 8555-135; 1934 (38) 1292.

§ 59-622. Government loans.

The board of commissioners of any electric light, water supply, fire protection and/or sewerage district may avail itself of any provision for loans to construct electric light systems, water supply systems, fire protection systems or sewerage systems from the United States Government, through the Reconstruction Finance Corporation, and may issue revenue bonds pledging the income from any such system in liquidation of any loan made as aforesaid by the United States Government.

1942 Code § 8555-138; 1934 (38) 1292.

§ 59-623. Budget of district.

To meet the expenses of operation and maintenance and the sinking fund and interest charges on the bond issue when the income derived from the works is not sufficient to meet such charges, the board of commissioners of any such electric light, water supply, fire protection and/or sewerage district shall each year before the levying of taxes make up an estimate or budget for such district, which shall give the estimated maintenance and expenses for the succeeding year and shall submit it to the county supervisor for approval and adoption. Any surplus or deficit that may occur in any one year shall be carried forward and applied to the next year's account and properly considered in the budget for the expenses of the district for the ensuing year.

1942 Code § 8555-136; 1934 (38) 1292.

§ 59-624. Levy, collection and disbursement of taxes.

After the approval thereof by the county supervisor, taxes shall be levied to meet such expenses upon all assessable property in the district and upon collection of them by the county treasurer they shall be disbursed only upon the approval of the board of commissioners of the said electric light, water supply, fire protection and/or sewerage district, as the case may be, by an order on the county treasurer drawn by the supervisor of the county in which said

district is located. All taves so levied for any such district shall be kept separate on the assessment roll from other levies and moneys so collected shall be kept in a separate fund for the district.

1942 Code § 8555-136; 1934 (38) 1292.

§ 59-625. Construction of chapter; no effect on State Board of Health.

This chapter being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purposes thereof. But all functions, powers and duties of the State Board of Health shall remain unaffected by this chapter.

1942 Code § 8555-139; 1934 (38) 1292.

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Supreme Court of the United States

OCTOBER TERM, 1957

No. 670

MILLS MILL, DRAPER CORPORATION AND THE POWELL KNITTING COMPANY, INDIVIDUALLY AND ON BEHALF OF ALL THE TAXPAYERS IN UNA WATER DISTRICT WHO MAY CARE TO COME IN, CONTRIBUTE TO THE COSTS HEREOF AND PARTICIPATE IN THIS ACTION, APPELLANTS,

versus

ERNEST E. HAWKINS, B. R. WEST AND J. T. NORTON, INDIVIDUALLY AND CONSTITUTING THE UNA WATER DISTRICT COMMISSION, APPELLEES.

ON APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA

APPELLANTS' BRIEF IN OPPOSITION TO APPELLEES' MOTION TO DISMISS OR AFFIRM

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STATEMENT

The Appellants in this their brief in opposition to Appellees' Motion to Dismiss or Affirm, respectfully submit that a substantial federal question is presented to this Court by this appeal and is one of public importance.

The specific question presented is designated with particularity under the heading of "Question Presented" on Page 3 of the Jurisdictional Statement and, for brevity's sake, will not be repeated here.

The Question is, for the purpose of this brief, divided into two parts: (a) Does not Act No. 582 of the General Assembly of the State of South Carolina, 1955, 49 Statutes at Large, Page 1400 *et seq.* deny to the area described

therein the equal protection of the laws as is guaranteed by the XIVth Amendment to the Federal Constitution? and (b) Does not Act No. 582 of the General Assembly and its application deprive Appellants of their property without due process of law and deny them equal protection of the laws in contravention of the XIVth Amendment?

Does not Act No. 582 of the General Assembly of the State of South Carolina, 1955, 49 Statutes at Large, Page 1400 et seq., deny to the residents of the area described therein the equal protection of the laws as is guaranteed by the XIVth Amendment to the Federal Constitution?

With reference to the first question, the General Assembly of the State of South Carolina in 1934 enacted a General Statute for the creation, management, control, etc., of water and sewer districts which has been, and is now, in effect and which pertains to the entire State of South Carolina and all its citizens (Act No. 734 of the Acts of the General Assembly of 1934; 49 Statutes at Large of South Carolina, Page 1400 *et seq.*, now titled 59 Sections 601-625, Inclusive, Volume 6, Code of Laws of South Carolina, 1952, Page 76 of Jurisdictional Statement). This general law is similar in most respects to Act No. 582 of the Acts of 1955, hereinafter referred to as the Special Act, with the significant exceptions that under the general law before a water or sewer district can be created a petition requesting the creation must be filed with the Clerk of Court of the County in which such district is proposed to be located * * * "signed by a majority of the resident landowners in the proposed district or by the owners of more than half the land and acreage which will be affected by or assessed for the expense of the proposed improvements, as shown by the tax assessment rolls. The petition shall be accompanied by a plat showing the limits of the proposed district."; the commissioners of the district, when so created, shall be elected

by the qualified voters; the board of commissioners shall not fix rates or charges "until after a public hearing at which all the users of the works and the owners of the properties served, or to be served, thereby shall have an opportunity to be heard concerning the proposed rates," whereas under the Special Act no such petition is required; the freeholders are denied the right to determine the boundaries of the district; the commissioners are to be appointed by the Governor upon the recommendation of the majority of the legislative delegation of Spartanburg County; the commissioners may fix rates to be charged without any public hearing thereon and, in addition, the commissioners by regulation may require any person within the district to use any water system and/or sewer system constructed by the commissioners, which provision does not appear in the general law.

It is submitted that the denial of the substantial right of petition, the right to determine the boundaries, the election of commissioners, and the right to be heard on the fixing of rates to be charged, which rights are granted to all other citizens of the State of South Carolina, in itself denies to the residents and the property owners of the area, created under the Special Act equal protection of the laws afforded all other residents and landowners of the State of South Carolina in derogation of the Federal Constitution and thereby raises a substantial question to be ultimately resolved by this Court. The fact that the Supreme Court of South Carolina has held that the Special Act does not violate a section of the South Carolina Constitution which prohibits special legislation where a general law can be made applicable (no such constitutional prohibition appears in the Federal Constitution) is in no sense controlling or germane to the issue raised by this appeal. Conceding, as we mu. t, in deference to the opinion of the Supreme Court of South Carolina, that the Special Act is not special legis-

lation in conflict with the provisions of Section 34, Article III of the Constitution of South Carolina, 1895, which provides * * * "where a general law can be made applicable, no special law shall be enacted" and further recognizing the general principle that a State Legislature may create a special purpose district, fix and determine its boundaries and benefits and that such action can be assailed under the due process and equal protection clause "only where the legislative action is 'arbitrary, wholly unwarranted, a flagrant abuse and by reason of its arbitrary character a confiscation of particular property' ". *Branson v. Bush*, 51 U. S. 182; 40 S. Ct. 113. Yet, when a state legislature has enacted a general statute, effective throughout the state and affecting every citizen of the state, we submit, that while such general law is in full force and effect, a Special Act denying to the residents in the area created thereby specific substantial rights accorded to all other citizens of the state under the general act denies equal protection of the laws to the residents of the area so created and unconstitutionally discriminates against them. If substantial rights granted to all citizens of the State can be nullified by the legislature in any one small area and, in the case of special legislation, in effect by the local delegation, then, we submit, property rights of the citizens in such area are at the mercy of the whims of the local delegations.

The situation as it now exists is the same, as we view it, as if the General Assembly, when it enacted the general law in 1934, had added a proviso to the effect that the rights, privileges and protection granted under the general law would not apply to a small area in Spartanburg County, describing such area as now described in the Special Act. Had the General Assembly so done we are convinced that there would be no question presented here, for, under such circumstances, the general law would have violated the XIVth Amendment and would, in our opinion, have been so

declared by the Supreme Court of South Carolina. We can see no practical difference between the two situations and respectfully submit that the Special Act deprives the residents and landowners in the area created therein of the equal protection of the laws of the State of South Carolina.

Does not Act No. 582 of the General Assembly and its application deprive Appellants of their property without due process of law and deny them equal protection of the laws in contravention of the XIVth Amendment?

In dividing, for the purpose of this brief, the question into two parts we did so as the first portion of the question relates solely to a matter of law. The second portion deals with a mixed question of law and fact, though the basic legal principles involved have been many times announced by the courts and are no longer in serious dispute.

This Court has held in the case of *Memphis & Charleston Railway Company v. Pace et al.*, 282 U. S. 241, 51 S. Ct. 108, 75 L. Ed. 315, "But, however the tax may be laid, if it be palpably arbitrary, and therefore a plain abuse of power, it falls within the condemnation of the due process clause, *Houck v. Little River District, supra; Valley Farms Co. v. Westchester, supra;* and if it be manifestly and unreasonably discriminatory it falls within the condemnation of the equal protection clause. *Gast Realty Co. v. Schneider Granite Co.*, 240 U. S. 55; *Kansas City Southern Ry. Co. v. Road Improvement District No. 6*, 256 U. S. 658; *Thomas v. Kansas City Southern Ry. Co.*, 261 U. S. 481; *Road Improvement District No. 1 v. Missouri Pacific R. R. Co.*, 274 U. S. 188."

From *Houck v. Little River Drainage District* (1915), 239 U. S. 254, 60 L. Ed. 266, to date, this Court has consistently held and reiterated that when a special or local improvement district, such as a water, sewer, drainage and/or sewer district, is so formed to include property

which is not and cannot be benefited, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation; that if the statute creating such a district and providing for the tax is of such a character that there is no reasonable presumption that substantial justice will be done, but the probability is that the property owners will be taxed disproportionately to each other and to the benefit conferred, the law cannot stand; and that in such districts the purpose and end result of the improvements is to enhance the values of the properties involved, and the costs assessed must bear some relationship to the benefits received. *Myles Salt Co. v. Board of Commissioners of the Iberia & St. Mary Drainage District*, 239 U. S. 478, 60 L. Ed. 392; *Gast Realty & Invest. Co. v. Schneider Granite Co.*, 240 U. S. 55, 60 L. Ed. 523; *Kansas City S. & R. Co. v. Road Improvement District*, 256 U. S. 658, 65 L. Ed. 1151; *Valley Farms Co. v. Westchester County*, 261 U. S. 155, 67 L. Ed. 585; *Chesebro v. Los Angeles County Flood Control District*, 306 U. S. 459, 83 L. Ed. 921; *Atchison, Topeka & Santa Fe Railway Co. v. Public Utilities Commissioners of California*, 346 U. S. 346, 98 L. Ed. 51; and cases therein cited.

It is the position of Appellants that in the creation of the Una Water and Sewer District by the Special Act, the General Assembly of the State of South Carolina did so arbitrarily and without reasonable grounds and the inclusion of the southern one-half, in which Appellants' properties are located, was not justified, but, on the contrary, included for the sole purpose of requiring these Appellants and others similarly situated to bear the expenses in taxation of retiring bonds and interest to defray the costs of the construction of water and sewer lines for the benefit of two small sections in the northern area. Appellants contend that the undisputed facts show that this legislative action was arbitrary, wholly unwarranted and a flagrant

abuse of its powers, and by reason of its arbitrary character a confiscation of Appellants' properties. They earnestly contend and assert that the record so shows. They do not and will not receive any reciprocal benefits or any prospect of benefits to them by the creation of the district and the construction of the water and sewer lines proposed to be installed by the commissioners of the district. A tax to be laid upon them for retiring the bonds and interest is manifestly unreasonably discriminatory and amounts to the confiscation of their respective properties.

We again call attention to the Jurisdictional Statement wherein we have analyzed the facts with relation to the creation of and the conditions existing in the district and will not repeat them here. A fair resume of such facts likewise appears in the dissenting opinion of Mr. Justice Legge appearing in the Appendix to the Jurisdictional Statement. (pp. 32 *et seq.*)

Appellees in their Motion refer at length to the opinion of this Court in the case of *Atchison, Topeka and Santa Fe Railroad Co. v. Public Utilities Commission of California et al.* (1953), 346 U. S. 346, 98 L. Ed. 51. They draw the incorrect conclusion that the instant case comes within certain of the principles announced therein to the effect that costs of improvements in the area need not be distributed on the basis of benefits which will accrue to the property of Appellants and others similarly situated.

We submit, on the contrary, the Special Act which creates the water and sewerage district and authorizes the issuance of a $500,000.00 bond issue to defray the expenses of the creation and installation of water and sewer lines (and the levy of a sufficient tax to retire the bond issue and interest) which improvements and whose purpose and end result is to enhance the value of the property involved by reason of added facilities are such types of improvements as to require the costs which are assessed to bear some re-

lation to the benefits received. It is not a case where the improvements are to be instituted to meet local transportation needs and further safety and convenience.

The legal principles announced in the above case are sufficiently set out in the opinion of the Court as follows: • • • "In this contention, we think the appellants are in error. These were not improvements whose purpose and end result is to enhance the value of the property involved by reason of the added facilities, **such as street, sewer or drainage projects, where the costs assessed must bear some relationship to the benefits received.** *Chesebro v. Los Angeles County Flood Control Dist.*, 306 U. S. 459, 83 L. Ed. 921, 59 S. Ct. 622; *Valley Farms Co. v. Westchester County*, 261 U. S. 155, 67 L. Ed. 585, 43 S. Ct. 261; *Kansas City S. R. Co. v. Road Improv. Dist.*, 256 U. S. 658, 65 L. Ed. 1151, 41 S. Ct. 604, *supra; Gast Realty & Invest. Co. v. Schneider Granite Co.*, 240 U. S. 55, 60 L. Ed. 523, 36 S. Ct. 254.

"Rather, in the cases at bar, the improvements were instituted by the State or its subdivisions **to meet local transportation needs and further safety and convenience, made necessary by the rapid growth of the communities.** In such circumstances, this Court has consistently held that in the exercise of the police power, the cost of such improvements **may be** allocated all to the railroads. *Erie R. Co. v. Board of Public Utility Comrs.*, 254 U. S. 394, 409-411, 65 L. Ed. 322, 333, 334, 41 St. Ct. 169; *Missouri P. R. Co. v. Omaha*, 235 U. S. 121, 127, 59 L. Ed. 157, 160, 35 S. Ct. 82; *Chicago, M. & St. P. R. Co. v. Minneapolis*, 232 U. S. 430, 441, 58 L. Ed. 671, 675, 34 S. Ct. 400; *Cincinnati, I. & W. R. R. Co. v. Connersville*, 218 U. S. 336, 344, 54 L. Ed. 1030, 1064, 31 S. Ct. 93, 20 Ann. Cas. 1206. There is the proper limitation that such alocation of costs must be fair and reasonable. *Nashville, C. & St. L. R. Co. v. Walters*, 294 U. S. 405, 415, 79 L. Ed. 949, 955, 55 S. Ct. 486, and the cases there cited." (Stress added.)

The majority opinion of the Supreme Court of South Carolina refers to the opinion of this Court in *Valley Farms Co. v. County of Westchester*, 261 U. S. 155, 43 S. Ct. 261, and reaches the conclusion therefrom that it is not essential that benefits be direct or immediate to justify an assessment to particular lands. However, in the instant case, it is specifically charged, and we submit incontrovertibly shown, that the inclusion of Appellants' properties in the area created by the Special Act was arbitrarily done by the General Assembly and for improper purposes. Furthermore, Appellants will receive no benefits, real or prospective, and, as pointed out in the Jurisdictional Statement, the majority opinion of the Supreme Court of South Carolina in attempting to declare benefits to be received by Appellants bases the same on a purely speculative basis, and as to these asserted benefits they are of a minute character and the costs assessed against them bear no relationship to the supposed benefits to be received.

The portion of the opinion of this Court in *Browning v. Hooper*, 269 U. S. 396, 70 L. Ed. 330, quoted by Appellees, as we view it, is merely *dicta*. Even if this be not so it still would lend no support to Appellees. In the instant case Appellants are not seeking to be heard on the question of benefits. Nor are they attacking the Special Act because it does not provide for a hearing on benefits. They are attacking it because they and others receive and can receive no benefits and because it denies to and deprives them and all others in the district those very substantial rights, privileges, guarantees and protections afforded to all other property owners, residents and qualified electors of rural areas of South Carolina by the General Law.

We cannot let go unchallenged certain erroneous argumentative statements of fact appearing in Appellees' Motion and more particularly on pages 4 and 5 thereof. The statements hereinafter referred to, (some material and

others immaterial), though not all, either do not appear in the Record or are not borne out by it.

Appellees state that Appellants are corporate entities and none of their executives reside in the area, and none of them appeared as witnesses in behalf of their case. It is submitted that the Record is silent as to the residence of the executives of Appellants when, in truth and in fact, though none of the presidents of Appellants reside in the district, yet certain of their executives do so. Furthermore the stipulation entered into by and between the parties, in effect, admits the allegations of the Complaint to which the executives otherwise would have testified. We call attention to the stipulation. (P. 25 of Transcript of Record wherein, among other things, paragraphs 1, 2 and 3 of the Complaint are expressly admitted, which paragraphs appear on pp. 4, 5, 6 and 7 of the Transcript.)

The stipulation specifically admits, as to each of the Appellants, that they have each installed a water and sewer system with all necessary lateral lines which are in operation and are entirely adequate and do serve all manufacturing and domestic purposes and all buildings located within their respective villages or communities. Therefore any statements made by Appellees to the contrary are without substance. The sewer systems of Appellants discharge into interceptor lines laid out and installed by the W. P. A. (pp. 56, 57 and 58 of Transcript), which interceptors are and have been available to all other residents of the district. Whereas the houses sold by Appellant, Mills Mill, are metered through a master meter, as stated by Appellees, all houses heretofore sold by the two other Appellants are individually metered. The Record is silent with reference to disease among the employees of Appellants or, as a matter of fact, anywhere in the area and we suggest that a statement that the installation of water and sewer lines in the district in general would result in less disease among em-

ployees of Appellants is not warranted where there is no testimony of any diseases among the employees now or in the past. Appellees incorrectly state that since this proceeding commenced Appellants have sold certain of their community mill houses to their employees and thereby relieved themselves of a part of their tax burden. The Record incontrovertibly discloses, and it is so stipulated, that the community houses sold by Appellants were sold prior to the institution of the instant action and the assessed valuation of Appellants' respective properties as set forth in the Record is the valuation after the sale of such houses. Appellees furthermore assume certain speculative benefits to be received by Appellants as a result of the creation and installation of the proposed water and sewer line. We submit that these assumptions are not borne out by the Record.

We note with interest Appellees' treatment of the Order of the trial judge (p. 8 Appellees' Motion) and the majority opinion of the Supreme Court of South Carolina (p. 9 Appellees' Motion). Implicit therein and running throughout is the suggestion that this Court should either dismiss the appeal or affirm the judgment of the Supreme Court of South Carolina on the theory or argument that the trial judge is personally familiar with the conditions existing within the district and the surrounding territory and that the three justices of the Supreme Court who wrote or concurred in the majority opinion are residents of the upper part of the State of South Carolina and, as a result, know and understand the alleged need for improving living conditions in the area (Una Water and Sewerage District) where this particular portion of South Carolina is growing and becoming more industrialized, etc. The suggestion continues that the eminent justices who dissented were not independently possessed of the extrinsic facts known to the trial judge and the other justices and that the minority opinion (p. 10 Appellees' Motion) indicates a lack of knowledge

as to the factual evidence in the Record as to the confiscatory phase of the question. *A fortiori*, the dissenting opinion was based on facts only appearing in the Record whereas the majority opinion was based, in part, on extrinsic facts only known to the writers.

In our willingness to accord the greatest credit possible to Appellees' "local knowledge" treatment of the Order of the trial judge and the majority opinion of the Supreme Court of South Carolina we can but conclude that Appellees intended to call this Court's attention to either of two propositions; that the facts in the Record are of such a complicated nature that only one possessing special knowledge of this somehow unique area can understand them, or that this "local knowledge" gave those justices some substantial additional facts not appearing in the Record. We would prefer to believe that Appellees intended the first proposition, however untenable it may be. So far as we can ascertain there is no section of our State so isolated as to have been untouched by current growth and industrialization.

All salient facts in connection with the creation of and the conditions existing in the area (Una Water and Sewerage District) are clearly set forth by competent testimony in the Record and in no way make the area unique so as to require some special independent knowledge to determine the constitutionality of the act creating the district.

CONCLUSION

We submit:

1. That the Special Act deprives Appellants and all other freeholders, residents and qualified electors of the district of equal protection of the laws and unconstitutionally discriminates against them, in violation of the XIVth Amendment to the Constitution of the United States.

2. That the Special Act denies to Appellants due process of law, in violation of the XIVth Amendment.

3. That the validity of the Special Act under the XIVth Amendment was squarely presented to the Supreme Court of South Carolina and a decision in favor of its validity incorrectly rendered.

4. That the decision on said federal question was necessary to the State Court's determination of the cause; that said determination did not rest on an adequate and independent ground in state law; and that there was no adequate state ground upon which said determination could have rested.

5. That the question is federal and substantial, as has been frequently recognized by this Court in like and similar cases; that the decision of the State Court on the question is *contra* to the decisions of this Court; and that hearing of the question and reversal of the State Court is of paramount public importance.

Respectfully submitted,

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JOHN T. FEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1957

No. 670

MILLS MILL, DRAPER CORPORATION AND THE POWELL KNITTING COMPANY, INDIVIDUALLY AND ON BEHALF OF ALL OF THE TAXPAYERS IN UNA WATER DISTRICT WHO MAY CARE TO COME IN, CONTRIBUTE TO THE COSTS HEREOF AND PARTICIPATE IN THIS ACTION, APPELLANTS,

versus

ERNEST E. HAWKINS, B. R. WEST AND J. T. NORTON, INDIVIDUALLY AND CONSTITUTING THE UNA WATER DISTRICT COMMISSION, APPELLEES.

ON APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA

MOTION TO DISMISS OR AFFIRM

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ON APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA

MOTION TO DISMISS OR AFFIRM

STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

Come now appellees and file their statement in opposition to appellants' appeal on the ground that it does not present a substantial federal question, and hereby move the Court to dismiss the appeal herein or affirm the decision and judgment of the Supreme Court of the State of South Carolina, from which decision and judgment said appeal is taken.

APPELLANTS WERE ACCORDED DUE PROCESS AND EQUAL PROTECTION OF THE LAWS

The statute enacted by the General Assembly of South Carolina about which the appellants complain is only one of many enacted during the past several years. All of them contain substantially the same provisions, and they have afforded a means of considerable growth to hitherto barren areas in South Carolina in that water, sewerage and garbage collection are obtainable. An adverse ruling by this Court therefor will have far reaching implications and will impede the health and standard of living of thousands of unfortunate South Carolinians.

The appellants in the State Courts advanced two grounds for attacking the validity of the legislation. First, they contended it was special legislation contravening the State Constitution, and secondly, that it deprived them of their property without due process of law and denies them the equal protection of the laws. Apparently, from a perusal of the statement of the case, they would like to advance both grounds here for it contains much surplusage about a general law. The only question here is whether or not the applicable Federal law has been adhered to by the State Court. That the applicable Federal law was applied to the facts in this case is apparent by reading the Circuit Court's opinion as appears on page 59 of the appellants' Jurisdictional Statement. There the Court cites the case of *Valley Farms Company v. Westchester County*, 261 U. S. 155, 43 S. Ct. 261, 67 L. Ed. 585, a case *a propos*, and one which adheres to the doctrine set forth in *Houck v. Little River Drainage Dist.*, 239 U. S. 254, 60 L. Ed. 266, 36 S. Ct. 58. In the majority opinion by the South Carolina Supreme Court (Jurisdictional Statement, pg. 26) several United States Supreme Court cases are cited to sustain the view that the statute is not violative of the due process and equal protec-

tion clauses of the Constitution. Those cases are *Branson v. Bush*, 251 U. S. 182, 40 S. Ct. 113; *Valley Farms Co. v. County of Westchester*, 261 U. S. 155, 43 S. Ct. 261, 67 L. Ed. 585; *Houck v. Little River Drainage District*, 239 U. S. 254, 36 S. Ct. 58, 60 L. Ed. 266 and *Kansas City Southern Ry. Co. v. Road Imp. Dist. No. 3*, 266 U. S. 379, 45 S. Ct. 136. On the other hand, it is worthy to note that the dissenting opinion and appellants cite cases in support of their position which were decided before the *Valley Farms Co. case, supra*, and which were distinguished in that case.

The doctrine set out in the case of *Myles Salt Co. v. Iberia & St. M. Drainage Dist.*, 239 U. S. 478, 36 S. Ct. 204, 60 L. Ed. 392 appears to be sound law but it has no application in the instant case because of the factual differences. Realizing that the State Court was conversant with the applicable Federal law, did they apply it correctly to the facts in this case?

The appellants complain that their area was arbitrarily included by the legislature. This complaint was ably refuted in the State Court's opinion (Jurisdictional Statement, pg. 26):

> "Adjoining the Una District are the City of Spartanburg and several water and sewer subdistricts. It is probable that the Legislature was undertaking to provide a general and comprehensive water and sewerage system for those areas which had developed around the City of Spartanburg and in doing so found it was not practicable to exclude appellants' lands and other small portions now served by these facilities. But be that as it may, we cannot say that the fixing of the boundaries of the Una Water District was a flagrant abuse of legislative discretion."

It is not necessary that a property owner have notice and opportunity to be heard before fixing the boundaries of a district so as to include his lands and prescribing the

method of tax. *Valley Farms Co. v. Westchester County, supra.*

Before the bonds could be issued under the Act a majority of the district residents had to vote thereby acquiescing in the burden of taxation. They have voted overwhelmingly to issue the bonds. Nothing has been forced upon the residents. The appellants are corporate entities and none of their executives reside in the area. None of them appeared as witnesses in behalf of their case and while they purported to show the assessed valuation of the property in the district of Duke Power Co., Southern Bell Telephone & Telegraph Company, A. & S. Railroad, A. & CAL Railroad and P. & N. Railroad, none of these companies joined in the cause at all. Appellants contend that they will be required to pay 37.4 per cent. of the tax levied to retire the bonds without any benefits, direct or indirect. They contend that they have water and sewer systems in operation adequately serving them and their communities. They forget that the sewer system, such as it is, that is now used by them has been made possible by the land owners in the district paying a six mill levy on their property since the year 1929, without they themselves being able to use the same. The residents fortunate enough to have use of water in the communities of the appellants are at the mercy of them in that they purchase the water through a master meter and can terminate the flow thereof at will and can likewise charge whatever rates they desire. Most water lines running through the district are privately owned and permission of the owner must be obtained to tap on. Water pressure in the lines that are in the district is inadequate with the result that not many residences have the use of water continuously. This creates hazardous conditions for fires. The water lines in and around the appellants are old and if normal pressure were applied to them, many would have to be replaced. The installation of water and sewerage

in the district generally would result in less disease among the employees of appellants. Their property would enhance in value. Fire insurance rates would be less. More industry and residents would come in with the tax load diminished on all property owners in the district. Finally, the appellants have, since this proceeding commenced, relieved themselves of part of their tax burden by selling the community mill houses to their employees with the result that the individual home owners are paying more taxes because their homes are assessed at a greater value than when the appellants returned them in bulk. To refute appellants' contention that they are adequately served, their witness, Superintendent Simms of the Spartanburg Water Works, testified that there is not ample water out there to supply the whole area through which it goes.

In the case of *Valley Farms Co. v. Westchester County, supra*, the Court brushed aside the same contentions made by appellants here as follows:

> "Since *Houck v. Little River Drainage Dist.* (1915), 239 U. S. 254, 60 L. Ed. 266, 36 S. Ct. 58, the doctrine has been definitely settled that, in the absence of flagrant abuse or purely arbitrary action, a state may establish drainage districts and tax lands therein for local improvements and that none of such lands may escape liability solely because they will not receive direct benefits.
>
> "*Myles Salt Co. v. Iberia & St. M. Drainage Dist.*; *Gast Realty & Investment Co. v. Schneider Granite Co.*; and *Kansas City Southern R. Co. v. Road Improvement Dist., supra*, present facts deemed sufficient to show action 'palpably arbitrary, and a plain abuse' of power. Here the allegations make out no such situation. All lands within the district ultimately may be connected with some portion of the sewer, and we cannot say they derive no benefits therefrom, or that any were included arbitrarily, or for improper purposes".

Browning v. Hooper, 269 U. S. 396, 405, 46 S. Ct. 141, 70 L. Ed. 330 holds that:

> "where a local improvement territory is selected, and the burden is spread by the legislature or by a municipality to which the State has granted full legislative powers over the subject, the owners of property in the district have no constitutional right to be heard on the question of benefits. *Valley Farms Co. v. Westchester, supra; Hancock v. Muskogee*, 250 U. S. 454, 459; *Withnell v. Construction Co.*, 249 U. S. 63, 69; *Wright v. Poliee Jury*, 264 Fed. 705."

The case of *Atchison, Topeka & Santa Fe Railway Co. v. Public Utilities Commission of California et al.* (1953), 346 U. S. 346 involved a state statute whereby the railway company was required to pay 50% of the costs in making certain grade separation improvements. To the railroad contention that the costs should be allocated on the basis of benefits to the railroads this Court held that there was nothing arbitrary or unreasonable and no deprivation of the property of the railroads without due process of law; that the railroads were not entitled to have the costs of the improvements allocated only on the basis of benefits which will accrue to their property. This Court distinguished the case of *Nashville C. & St. L. R. Co. v. Walters*, 294 U. S. 405, 79 L. Ed. 949 advanced by appellants in support of their position here from the *Atchison case, supra*, in that the *Nashville case* involved improvements to meet local transportation needs and further safety and convenience, whereas this case involves improvements whose purpose and end result is to enhance the value of the property involved by reason of the added facilities.

In the case of *Memphis & Charleston Railway Company v. Pace et al.*, 282 U. S. 241, 51 S. Ct. 108, 75 L. Ed. 315 the State of Mississippi imposed a road tax for road improvement and the railroad having part of its line and

other property within the road district contended the act was invalid as authorizing the imposition of a tax which was so palpably arbitrary and unreasonably discriminatory that it offended the due process and equal protection clauses of the Fourteenth Amendment. The appellant contended that the tax was not apportioned according to benefits but was laid upon all the property, real and personal, within the district on an *ad valorem* basis; that its personal property would receive no benefits and that even if there be some benefit to the appellant's property, the tax laid thereon is disproportionate to the benefit and to the tax laid on other property. The Court in sustaining the tax held:

> "Whether the tax shall be state wide or confined to the county or local district wherein the improvement is made, and whether it shall be laid generally on all property or all real property within the taxing unit, or shall be laid only on real property specially benefited, are matters which rest in the discretion of the State, and are not controlled by either the due process or the equal protection clause of the Fourteenth Amendment. *County of Mobile v. Kimball*, 102 U. S. 691, 703; *Spencer v. Merchant*, 125 U. S. 345, 355-356; *Houck v. Little River District*, 239 U. S. 254, 262, 265; *Valley Farms Co. v. Westchester*, 261 U. S. 155; *Missouri Pacific R. R. Co. v. Crawford Road District, supra; Kansas City Southern Ry. Co. v. Road Improvement District No. 3*, 266 U. S. 379, 386.
>
> "But, however the tax may be laid, if it be palpably arbitrary, and therefore a plain abuse of power, it falls within the condemnation of the due process clause, *Houck v. Little River District, supra; Valley Farms Co. v. Westchester, supra;* and if it be manifestly and unreasonably discriminatory it falls within the condemnation of the equal protection clause. *Gast Realty Co. v. Schneider Granite Co.*, 240 U. S. 55; *Kansas City Southern Ry. Co. v. Road Improvement District No. 6*, 256 U. S. 658; *Thomas v. Kansas City Southern Ry. Co.*, 261 U. S. 481; *Road Improvement District No. 1 v. Missouri Pacific R. R. Co.*, 274 U. S. 188.

> "Where the tax is laid generally on all property or all real property within the taxing unit, it does not become arbitrary or discriminatory merely because it is spread over such property on an *ad valorem* basis; nor where the tax is thus general and *ad valorem* does its validity depend upon the receipt of some special benefit as distinguished from the general benefit to the community. *St. Louis & Southwestern Ry. Co. v. Nattin*, 277 U. S. 157; *Valley Farms Co. v. Westchester, supra; Houck v. Little River District, supra; Miller & Lux v. Sacramento Drainage District*, 256 U. S. 129; *Missouri & Pacific R. R. Co. v. Crawford Road District, supra.*"

This is not a case where the appellants have been denied the right to present their case to the court. It was heard in the lower State Court before a jurist who is a life-long resident of the County in which the Una District is situated and who heard the witnesses examined and cross examined, and who is personally familiar with the conditions existing within the district and the surrounding territory. In his opinion he wrote (Jurisdictional Statement pg. 62):

> "It is contended by the plaintiffs that the burden of taxes falling upon them will be confiscatorily excessive, depriving them of property without due process of law. It is obvious, of course, that they will pay substantially. However, the Court is of the opinion that the plaintiffs have not by the preponderance of the evidence, established that the payments will be in such proportion that the Court should intervene. It is a legislative matter and this Court concludes that the plaintiffs have not carried the burden of proof on this point".

This finding by the Court was inescapable as the appellants' only evidence was one inexperienced witness with a bare mathematical calculation based on 1950 property value assessments. The witness did not take into consideration the increased value of assessments which would naturally result if and when adequate water and sewerage

facilities made the vacant land in the district available for industrial expansion; that the revenue to be received from the sale of the water was not considered; and the increased assessed valuation of the houses as a result of the mills selling them to their employees.

There is evidence from one of appellants' principal witnesses (Mr. R. B. Simms, Superintendent of the Water Works) that he had never known of a District or section which had water and sewerage installed therein which did not rise in property valuations. It is a matter of common knowledge that vacant or slum areas without water and sewerage facilities sell by the acre and that the same property as to which streets, sewerage and water are provided will sell by the front foot. It is conceivable that the vacant or slum property in the Una Water District, being situated as it is, bounded on one side by the City of Spartanburg; on another side by the main line of the Southern Railroad from Washington to Atlanta; and on another side by the most heavily travelled U. S. Highway in South Carolina, might develop and enhance in value to such an extent that the taxes produced on the new assessed valuation would in time be lower with the proposed water and sewerage bond issue than they now are without it.

The majority view of the South Carolina Supreme Court, consisting of three eminent Justices who have lived in South Carolina their entire lives; who come from the upper part of South Carolina where industrial rather than agricultural conditions are predominant and who know and understand the need for improving living conditions in an area where this particular portion of South Carolina is growing and becoming more industrialized more rapidly than at any time in history, affirmed in their Opinion the Opinion of the lower Court, and ratified the action of the Legislature of South Carolina, who passed the Act and the overwhelming majority of the people in the Una Water

District who voted for the bond issue in question. Their decision should be allowed to stand.

The minority decision of the Court devotes only about two pages to the confiscatory phase of the question. It indicates a lack of knowledge as to the factual evidence in the record as to the confiscatory phase of the question. This brief and incidental holding should not be a basis for this Court taking jurisdiction of a matter (primarily factual in its nature) which has been thoroughly considered over a period of years by the Legislature of South Carolina, a vote of the people in the District involved, a local Resident Judge and a majority of the Justices of the South Carolina Supreme Court.

For the aforesaid reasons it is obvious that the contentions by appellants that the opinion of the Supreme Court of South Carolina is in direct conflict with the holdings of this Court in the case of *Myles Salt Co. v. Board of Commissioners, supra,* is completely without substance and the face of the record reflects that fact. It is equally apparent that the Constitutional guarantees of due process and equal protection have not been violated by this Act and the face of the record reflects that fact. Therefore, no substantial federal question is presented on any issue. This case is one where there has been no doubt about the applicable Federal law from its beginning and the State Courts have scrupulously adhered to it in applying it to the facts of the case.

THE APPEAL HEREIN IS WITHOUT MERIT, THERE BEING NO SUBSTANTIAL FEDERAL QUESTION INVOLVED

Appellees contend that the record in this case discloses no substantial federal question and, therefore, this Court is without jurisdiction of this cause. It is therefore submitted that appellees' motion herein to dismiss the appeal or affirm the judgment of the Supreme Court of South Carolina should be granted.

Wherefore, appellees pray that this Court refuse to note jurisdiction in this cause and that appellees' motion to dismiss the appeal or affirm the judgment be granted.

Respectfully submitted,

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